

CA20N

EAB

-H26



Ontario

ENVIRONMENTAL ASSESSMENT BOARD

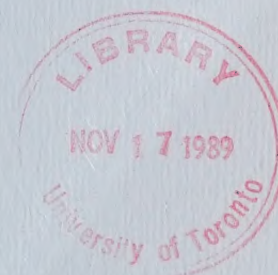
VOLUME: 157

DATE: Thursday, November 9th, 1989

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member



FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

**FARR &
ASSOCIATES**
REPORTING INC.

(416) 482-3277

2300 Yonge St., Suite 709, Toronto, Canada M4P 1E4



Digitized by the Internet Archive
in 2023 with funding from
University of Toronto

<https://archive.org/details/31761116524414>

HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER OF a Notice by the
Honourable Jim Bradley, Minister of the
Environment, requiring the Environmental
Assessment Board to hold a hearing with
respect to a Class Environmental
Assessment (No. NR-AA-30) of an
undertaking by the Ministry of Natural
Resources for the activity of timber
management on Crown Lands in Ontario.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St., Thunder
Bay, Ontario, on Thursday, November 9th,
1989, commencing at 8:00 a.m.

VOLUME 157

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member

A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	
MS. C. BLASTORAH)	MINISTRY OF NATURAL
MS. K. MURPHY)	RESOURCES
MS. Y. HERSCHER)	
MR. B. CAMPBELL)	
MS. J. SEABORN)	MINISTRY OF ENVIRONMENT
MS. B. HARVIE)	
MR. R. TUER, Q.C.)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN)	ASSOCIATION and ONTARIO
MS. E. CRONK)	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY)	ASSOCIATION
MR. H. TURKSTRA	ENVIRONMENTAL ASSESSMENT BOARD
MR. E. HANNA)	ONTARIO FEDERATION OF
DR. T. QUINNEY)	ANGLERS & HUNTERS
MR. D. HUNTER)	NISHNAWBE-ASKI NATION
MS. N. KLEER)	and WINDIGO TRIBAL COUNCIL
MR. J.F. CASTRILLI)	
MS. M. SWENARCHUK)	FORESTS FOR TOMORROW
MR. R. LINDGREN)	
MR. P. SANFORD)	KIMBERLY-CLARK OF CANADA
MS. L. NICHOLLS)	LIMITED and SPRUCE FALLS
MR. D. WOOD)	POWER & PAPER COMPANY
MR. D. MacDONALD	ONTARIO FEDERATION OF LABOUR
MR. R. COTTON	BOISE CASCADE OF CANADA LTD.
MR. Y. GERVAIS)	ONTARIO TRAPPERS
MR. R. BARNES)	ASSOCIATION
MR. R. EDWARDS)	NORTHERN ONTARIO TOURIST
MR. B. McKERCHER)	OUTFITTERS ASSOCIATION

APPEARANCES: (Cont'd)

MR. L. GREENSPOON)	NORTHWATCH
MS. B. LLOYD)	
MR. J.W. ERICKSON, Q.C.)	RED LAKE-EAR FALLS JOINT
MR. B. BABCOCK)	MUNICIPAL COMMITTEE
MR. D. SCOTT)	NORTHWESTERN ONTARIO
MR. J.S. TAYLOR)	ASSOCIATED CHAMBERS OF COMMERCE
MR. J.W. HARBELL)	GREAT LAKES FOREST
MR. S.M. MAKUCH)	
MR. J. EBBS	ONTARIO PROFESSIONAL FORESTERS ASSOCIATION
MR. D. KING	VENTURE TOURISM ASSOCIATION OF ONTARIO
MR. D. COLBORNE)	GRAND COUNCIL TREATY #3
MS. S.V. BAIR-MUIRHEAD)	
MR. R. REILLY	ONTARIO METIS & ABORIGINAL ASSOCIATION
MR. H. GRAHAM	CANADIAN INSTITUTE OF FORESTRY (CENTRAL ONTARIO SECTION)
MR. G.J. KINLIN	DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC	MINISTRY OF NORTHERN DEVELOPMENT & MINES
MR. M. COATES	ONTARIO FORESTRY ASSOCIATION
MR. P. ODORIZZI	BEARDMORE-LAKE NIPIGON WATCHDOG SOCIETY

APPEARANCES: (Cont'd)

MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON
MR. C. BRUNETTA	NORTHWESTERN ONTARIO TOURISM ASSOCIATION

(iv)

I N D E X O F P R O C E E D I N G S

Page No.

SUBMISSIONS.....27352

Witness:

Page No.

JOHN EDWARD OSBORN,
JOHN CARY,
DAVID GORDON,
WILLIAM STRAIGHT,
DAVID EULER,
JAMES ALEXANDER MacLEAN,
TOM TWORZYANSKI, Resumed 27393

Continued Direct Examination by Ms. Murphy 27394
Continued Direct Examination by Ms. Blastorah 27460

SUBMISSIONS (cont'd).....27540

(v)

I N D E X O F E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
937	Copy of letter dated October 12, 1989.	27393

1 ---Upon commencing at 8:10 a.m.

2 THE CHAIRMAN: Good morning. Be seated,
3 please.

4 Ms. Cronk?

5 MS. CRONK: Good morning, sir. Good
6 morning to the rest of the Board members.

7 Now, Mr. Chairman, I am in a position now
8 to respond to the submissions that were made yesterday,
9 if the Board considers this a convenient time.

10 THE CHAIRMAN: Yes.

11 MS. CRONK: Thank you. Perhaps we should
12 wait for the other counsel.

13 THE CHAIRMAN: Okay.

14 MS. CRONK: Mr. Chairman, I would like to
15 respond, as I indicated, to the submissions made
16 yesterday by Mr. Lindgren and then latterly by Mr.
17 Edwards regarding the issue of both the formal Notice
18 of Motion and as well the nature of the relief being
19 sought in the matter that we have raised with Ms.
20 Swenarchuk and as well, sir, I would like to respond to
21 a question put by the Board as to whether this is the
22 most appropriate forum in which to deal with this
23 matter.

24 We are prepared, Mr. Chairman --

25 MS. MURPHY: I am sorry to interrupt.

1 Should the panel stand down, will it take a few
2 minutes?

3 MS. CRONK: Yes, sir.

4 THE CHAIRMAN: Yes, you can if you like.
5 Thank you.

6 ---(witness panel withdraws)

7 MS. CRONK: Thank you.

8 Mr. Chairman, we are prepared as we
9 indicated yesterday, and indeed as had been requested
10 by Ms. Swenarchuk herself, to let this matter sit until
11 next week; however, because the matter was placed
12 before you yesterday and the manner in which it arose,
13 the procedures involved are now, in our view, squarely
14 an issue and it is for that reason that we've
15 considered at great length what was raised yesterday
16 and the comments and suggestions made by you, sir.

17 It remains our view that no formal Notice
18 of Motion is required. As I indicated yesterday, that
19 is the position that we took from the outset and that
20 communicated to Ms. Swenarchuk in writing, but I add
21 immediately, sir, that if the Board at the end of the
22 submissions that I intend to make over the next 10
23 minutes or so consider it appropriate the formal notice
24 be delivered, we will most willingly comply with that
25 direction and will do so immediately so that this

1 matter can be entertained in a more formal way next
2 week.

3 What we are in fact proposing, however,
4 is what we submit to you is a rather simple solution
5 and I should perhaps put it in a context for you.

6 We, as legal counsel, on behalf of our
7 clients, together with our clients, have been concerned
8 on a number of occasions over the last several months
9 about the nature of certain comments made by Ms.
10 Swenarchuk in the press and attributed directly to her.

11 We have been concerned regarding the
12 inaccuracy in, our view, of certain of these comments,
13 we have been concerned about what we regard as the
14 unfairness of certain of the comments and indeed their
15 criticism of other legal counsel, either implicitly or
16 expressly, and of other parties appearing before you,
17 as well in some instances of their apparent criticism
18 of the Board.

19 Last week two additional articles were
20 brought to our attention which crystallized our concern
21 in this regard and, accordingly, we wrote to Ms.
22 Swenarchuk on November the 2nd indicating our concern
23 and indicating our intention to bring the matter
24 forward for your attention.

25 That resulted in two telephone

1 communications between Ms. Swenarchuk and myself and
2 two subsequent letters, one dated November the 6th from
3 Ms. Swenarchuk to our firm and one from our firm to her
4 in reply dated November 7th. That's the background
5 generally, sir, to the matter.

6 The type of issue that has arisen is not
7 unique and is not unprecedented. There is nothing
8 particular in our respectful submission to this hearing
9 about this kind of an issue; nor, frankly in our
10 submission, is the solution unique or unprecedented. I
11 said a few moments ago that it would be our submission
12 that there is a relatively simple solution, I hope you
13 will be persuaded at the end of our comments that that
14 is the case.

15 I was asked yesterday whether this was
16 the appropriate forum in which to raise this matter and
17 what relief in fact would be sought and I would like to
18 provide to the Board a decision of Mr. Justice Grange
19 in the Royal Commission of Inquiry regarding the
20 Hospital for Sick Children in which this very issue
21 arose, precisely this issue, in a proceeding, Mr.
22 Chairman, that was similar in our submission to the
23 proceeding before you in certain respects.

24 Similar in this sense: Certainly
25 complex, certainly very lengthy, some 20 months,

1 certainly multi-partied, large number of legal counsel
2 and parties involved, no formal Notice of Motion was
3 considered necessary or brought in that case to deal
4 with this matter, no materials were required, save the
5 facts of the article themselves, it was treated as a
6 matter within the jurisdiction of the Commissioner to
7 clarify and provide directions on pursuant to his right
8 in his status as a Commissioner to control his own
9 process. And that, in essence, sir, is what we are
10 asking from this Board, that is pursuant to your
11 jurisdiction to control your own process. We are
12 asking for the assistance of the Board, the
13 clarification of the Board as to what the rules are
14 that are to apply in this proceeding.

15 As you know as well, sir, that Commission
16 in some respects was unprecedented and there is an
17 analogy to this proceeding in that sense as well. So I
18 hope, sir, in a very few minutes to indicate to you
19 what we submit is the simple solution available and the
20 reasons that it should be dealt with in a rather
21 straightforward but urgent fashion.

22 I have taken the liberty, Mr. Chairman,
23 of highlighting the relevant portions of the decision
24 for the Board and my friends. (handed)

25 THE CHAIRMAN: Thank you.

1 MS. CRONK: We have also taken the
2 liberty, Mr. Chairman, again for perhaps apparent
3 reasons, of deleting the name of the lawyer involved in
4 that case but leaving of course the directions of Mr.
5 Justice Grange. And if I could take very quickly a few
6 minutes, I think the parallel, sir, will be apparent.

7 There are three extracts before you, all
8 from actual transcripts of evidence and the ruling
9 before the Commission, they date from February of 1984.

10 The first page of the first extract
11 indicates what the issue was before the Commissioner.
12 He indicated, sir - and perhaps it is easier if I just
13 quote him - this was his characterization of the issue.

14 "Just so that there be no
15 misunderstanding, the complaint with
16 respect to yours..."

17 Meaning that lawyer's conduct:

18 "...was criticism of other counsel,
19 naming other counsel who were away from
20 the Commission; that is what it is. I
21 didn't see in any of those excerpts..."

22 From articles in which other counsel were quoted:

23 "...any criticism of the Commission or
24 of other counsel. The complaint, as I
25 understand it, has been that you are

1 counsel here for an interested party and
2 that you have a right to speak here; you
3 have a right to say what your complaint
4 is about other counsel and about the
5 Commission and that if you, instead of
6 doing it here, you do it someplace else,
7 that is improper, unwarranted and, in one
8 word expressed by one of the counsel, it
9 is cowardly. That is the complaint."

10 And then the Commissioner again
11 characterized the issue at page 4033, that's two pages
12 over, by saying, and this was addressing the lawyer
13 involved when submissions were being made. This is
14 the Commissioner:

15 "...whatever you say, whatever it may
16 have been, that wasn't my understanding
17 of it, but whatever you may say, the
18 question before us now is can
19 you now, can you now take to the media or
20 take to someone else in a forum in which
21 the media will get hold of it something
22 that you will -- some abuse or some
23 complaint about the conduct of the
24 Commission or conduct of counsel that you
25 do not bring up here, that's all. I

1 don't know whether you have given that
2 matter, that direct question some
3 thought, but that is what the issue is."

4 And then the suggestion was made, sir, by
5 the lawyer involved that the matter properly should go
6 to another forum, that is the Law Society.

7 The Commissioner's remarks and
8 conclusions are set out at the bottom of the page and
9 he indicated that he did not think that was right. He
10 alluded to his prior experience as a benchner and
11 indicated that there have been circumstances under
12 which the Law Society had indicated they would not deal
13 with a matter of this kind.

14 I wanted to provide those excerpts to
15 you, sir, so that the nature of the issue itself would
16 be clear and so that it would be apparent that the
17 issue is the same.

18 The actual ruling follows in the
19 following pages and what the Commissioner indicated was
20 this, and he proposed a very - in his words - simple
21 solution; and, that is, in essence, Mr. Chairman, what
22 we urge upon you, the Board, in the context of this
23 proceeding.

24 At page 4496 of the transcript, the
25 Commissioner is reading his ruling entirely. And I

1 should say, sir, that there were two complaints, unlike
2 the matter that has been raised before you. There were
3 two complaints before Mr. Justice Grange, the first was
4 conduct of a party and the second was conduct of legal
5 counsel. We are only concerned with conduct of legal
6 counsel.

7 THE CHAIRMAN: But didn't he address as
8 well conduct of the parties?

9 MS. CRONK: Yes, he did, sir.

10 THE CHAIRMAN: Okay.

11 MS. CRONK: And specifically in the
12 ruling I have given you.

13 THE CHAIRMAN: Yes.

14 MS. CRONK: What the Commissioner
15 indicated in the highlighted portions at page 4496 was
16 this:

17 "A complaint has now been made by Counsel
18 for the Attorney General and Counsel for
19 the Metropolitan Toronto Police relating
20 to the conduct outside the hearing of an
21 official of..."

22 One of the parties:

23 "...and of one of the Counsel for that
24 organization.

25 I should say at the outset that the

1 complaint in my view is justified but the
2 improprieties were not of such magnitude
3 that the whole matter could not have been
4 disposed of very simply by a mild
5 condemnation and ideally by an expression
6 of regret and an undertaking to try to
7 avoid repetition. (Indeed Mr. Hunt for
8 the Attorney General sought no remedy
9 except the expression of my views.)"

10 That, sir, is the essence and the reason
11 that the matter is being brought forward to this
12 Board's attention.

13 The Commissioner went on to indicate that
14 in the circumstances of that case, the case before him,
15 which may not apply here, he was required to deal with
16 the matter more formally and in detail because of the
17 attitude adopted by the lawyer involved when the
18 concern was raised.

19 And then, sir, if you carry on the next
20 several pages are quoting from the articles involving
21 the party as opposed to the lawyer and over at page
22 4500 reference is made to the actual offending article
23 quoting the lawyer. And the Commissioner makes this
24 observation deal with that article.

25 "It is certainly a possible inference

1 from those remarks that the Commission
2 itself is attempting to prove the guilt
3 of a particular nurse having chosen her
4 apparently at random."

5 What the Commissioner was saying there,
6 sir, is that he was concerned about possible inferences
7 having to do with the public perception of his
8 proceedings. And, in our respectful submission, that
9 is very much an issue here.

10 Over on the next page he deals with his
11 views as to the conduct of parties as distinct from
12 lawyers, and then over at page 4504 he indicates this,
13 and I place some emphasis on this, Mr. Chairman,
14 because this is our position before you on this issue.

15 Mr. Justice Grange said the following:

16 "It is my view that..."

17 the lawyer involved,

18 "...and those who support..."

19 the lawyer,

20 "...have missed the point entirely. The
21 complaint has nothing to do with freedom
22 of expression or freedom of the press,
23 concepts that were with us long before
24 the Charter of Rights and Freedoms was
25 ever thought it. Subject to the law of

1 defamation, I can have no objection to
2 any member of the public or of the media
3 expressing his views not only on the
4 nature of the Inquiry and the evidence
5 but also the propriety or fairness of
6 the proceedings. Some of the comments
7 made display little more than the
8 ignorance of the commentator upon the
9 facts, the law or the issues but some of
10 them are both well-informed and
11 intelligent and I have profited from
12 them. But whether the comments are
13 favourable or unfavourable, good or bad,
14 destructive or helpful, the commentators
15 have a right to make them, a right that I
16 and all of us here are pledged and
17 determined to preserve."

18 What this is all about is not freedom of
19 speech but legal ethics, courtesy,
20 fairness and professional conduct.

21 As put by Mr. Tobias..."

22 That was another lawyer, sir, before the
23 proceeding.

24 "What we are really talking about here
25 is the appropriateness of the comments

1 that are made, the respect those parties
2 have for the whole process and for the
3 dignity of the process, and more
4 importantly, the responsibility of
5 counsel in terms of what their clients
6 are saying to the press."

7 And I place some emphasis on the next
8 passage, Mr. Chairman.

9 "I need only add that the obligation of
10 counsel is all the stronger when the
11 words complained of are not the clients
12 but his own."

13 So and so,

14 "...is a lawyer and bound by
15 the ethics of his or her profession."

16 The lawyer,

17 "...owes a duty of courtesy and fairness
18 to the Court and to his/her fellow
19 advocates." The lawyer,

20 "...says that this is not a Court of Law
21 and of course..." the lawyer,

22 "...is right. But that does not diminish
23 my power as it is put by Mr. Lamek --"

24 Mr. Lamek was one of the Commission

25 counsel,

1 "--to express my disapproval of the..."
2 the lawyer's conduct,
3 "...and to say to..." the lawyer,
4 "...as I do now and I regret to have to
5 say it that I find in..." the lawyer's
6 statements,
7 "...and those..." the lawyer,
8 "...has permitted the client to make
9 something inconsistent with..." the
10 lawyer's,
11 "...duty of courtesy to me and to fellow
12 counsel. It may be that as a
13 Commissioner I have not the same power of
14 discipline as I have as a Judge but I
15 have never heard and I refuse to accept
16 that the fact that Counsel is appearing
17 before a Commission somehow diminishes
18 his obligation of courtesy, fairness and
19 good faith or his obligation to conduct
20 himself in a professional manner."
21 The following passage is also
22 significant, Mr. Chairman, in our respectful
23 submission.
24 "There has also been put forth the
25 suggestion that because the Inquiry has

1 evoked much media interest and
2 considerable publicity, Counsel are
3 freer to express themselves regardless
4 of the niceties of their Profession. I
5 cannot speak too strongly against that
6 proposition. The fact that this
7 Commission is under close public scrutiny
8 should if anything make Counsel more
9 anxious to demonstrate to the public the
10 high standards of our profession.
11 If they allow their standards to fall
12 because of the publicity, then this
13 experiment in full exposure will have
14 proved a dismal failure.
15 Having expressed my views that should be
16 the end of it. However, I must face the
17 prospect that..." the lawyer,
18 "...and..." the lawyer's,
19 "...partners in this case will
20 notwithstanding my views..."

21 That is the Commissioner's:

22 "...continue in their course of conduct."

23 And he goes on to quote from something
24 that the lawyer involved had to say when the complaint
25 arose.

1 And then in conclusion on the next page,
2 Mr. Chairman, he said this:

3 The lawyer involved, "...has suggested
4 that my only remedy is to report the
5 matter to the Law Society. I am not sure
6 that that would be appropriate. The law
7 Society might well respond that I should
8 deal with the matter myself. The remedy
9 under S8(c) of the Public Inquiries Act
10 might be more appropriate."

11 THE CHAIRMAN: What is that remedy?

12 MS. CRONK: That is the jurisdiction to
13 state a case to the Divisional Court for contempt, sir.

14 THE CHAIRMAN: So those are the citation
15 powers that are similar that exist under the Statutory
16 Powers Procedure Act governing the proceedings of this
17 Board?

18 MS. CRONK: Directly analogous to Section
19 13 of the Statutory Powers Procedure Act, except in the
20 case of the Commission it's a stated case.

21 THE CHAIRMAN: Right.

22 MS. CRONK: In the case of the Board it's
23 an application.

24 THE CHAIRMAN: All right. Thank you.

25 MS. CRONK: So he is indicating that he

1 thought that route not appropriate.

2 He goes on to say:

3 "I have just one more thing to say."

4 And this I believe, Mr. Chairman, echoes
5 the point perhaps the Board was trying to make
6 yesterday:

7 "This is not an easy task and it is made
8 immensely, more difficult by the
9 continued preoccupation with the conduct
10 of a particular Counsel. I find that
11 conduct not only improper but
12 incomprehensible. It cannot possibly be
13 (as a moment's reflection would tell...)"

14 the lawyer involved,

15 "...in the interest of... " the lawyer's,
16 "...client."

17 And this is the part, sir, that I think
18 the Board was alluding to.

19 "But my prime interest is the integrity
20 of this Commission and the completion of
21 the task assigned to it. It has been my
22 hope to be assisted in that task by
23 Counsel but it must be done without or
24 without that assistance. The conduct
25 complained of does not assist; indeed it

1 hinders us without in any way assisting
2 the client's cause. I cannot and will
3 not tolerate its repetition."

4 Mr. Chairman, I provide that to the Board
5 for its assistance in response both to the forum issue
6 and the remedy issues about which I was questioned
7 yesterday and, sir, simply to point out that the nature
8 of the issue is the narrow one, in our submission, that
9 we suggested to you yesterday; and, that is, what rule
10 is to apply regarding the ability of counsel for any
11 party, legal counsel, having regard to the particular
12 duties that attach to legal counsel to comment in
13 written publications in the public forum or to comment
14 in interviews or articles about any of the following:
15 The conduct of other counsel, the Board itself, the
16 nature of the evidence, other parties, or the fairness
17 of this proceeding.

18 In our respectful submission, it is the
19 process and the dignity of this Board's proceedings
20 that we feel are at issue with respect to the type of
21 articles that we are concerned about.

22 THE CHAIRMAN: Sorry. What was your last
23 one after other parties?

24 MS. CRONK: The fairness of the
25 proceedings itself, sir.

1 THE CHAIRMAN: Okay.

2 MS. CRONK: The point really comes to
3 this: In our submission, it is the fairness of the
4 proceedings that are in issue implicitly or explicitly,
5 and as well the perceptions of the public and the
6 parties as to the fairness of the proceeding and, in
7 our respectful submission, that has been put in issue.

8 The real issue is this, is that if there
9 are complaints about the nature and sufficiency of the
10 evidence that you are receiving, if there are
11 complaints about the parties before the Board, if there
12 are complaints about other legal counsel or about the
13 fairness of the proceeding, is it the duty and the rule
14 that the lawyers involved in this case should raise
15 those matters directly in your presence so that they
16 may fully aired and all parties affected may respond to
17 them.

18 In our submission, that is the rule.
19 What we are in essence seeking from you is an
20 indication that that standard of conduct, that rule,
21 applies in a proceeding of this kind. If it does not,
22 I say to you simply, sir, that all parties may assess
23 their position and consider what is or is not
24 appropriate in the future, but it is really guidance
25 for all that we are seeking in the context of a

1 specific issue that has arisen.

2 Now, yesterday Mr. Lindgren quoted from
3 portions of correspondence between Ms. Swenarchuk and
4 our offices. We were asked by the Board whether this
5 matter could be handled generically. We have
6 considered that most seriously, Mr. Chairman, and we
7 have also taken instructions at some length last
8 evening.

9 We regretfully do not feel that this
10 matter can be considered in a total vacuum. The Board,
11 in our view, should know what has occurred and what has
12 been said elsewhere about these proceedings.

13 Everyone knows the generic rule, Mr.
14 Chairman. As I pointed out yesterday, it has been
15 clearly articulated and defined both by our governing
16 professional body and, of course, by Mr. Justice Grange
17 in my submission. The issue is not what is the generic
18 rule but, rather, what is the rule here.

19 Given that, in our submission, Mr.
20 Chairman,, what we propose to do is simply this, that
21 the solution suggested by Mr. Justice Grange should be
22 adopted and, as he said, that it is rather a simple
23 solution, that there should be an indication as to
24 whether the type of conduct involved is acceptable or
25 sufficiently circumspect, if I can use that word, and

1 an indication given that an effort will be made not to
2 have it reoccur in the future.

3 In any event, it is unfair in our
4 submission and inappropriate that your attention be
5 drawn to portions only of the relevant correspondence
6 and what we suggest then, sir, in an effort to be fair
7 to all is this: We propose to provide you with the
8 letters, the articles in question were referred to and
9 attached to one of the letters. We have highlighted
10 the relevant portions. We will provide copies to all
11 of the parties here and we don't propose to refer to
12 them any further, certainly not to the specific
13 contents.

14 In our submission, as will appear from
15 the nature of the correspondence, we made every effort
16 to extend, in our view, every courtesy to Ms.
17 Swenarchuk. Our intent was then and now to obtain
18 clarification and guidance from the Board while
19 avoiding any unnecessary formalization of this matter
20 or any unnecessary prolonging of the matter.

21 Ms. Swenarchuk has asked for a more
22 formalized issue; we do not, we did not. We ask for
23 the matter to be dealt with in terms of clarification
24 from the Board as to the proceedings before it.

25 And there is one other consequence of

1 this that I would like to address, if I may, in a
2 moment.

3 (handled)

4 THE CHAIRMAN: Thank you.

5 MS. CRONK: The issue as I have
6 indicated, Mr. Chairman, in our submission is simply
7 this: Does Commissioner Grange's ruling apply here, is
8 the same rule to apply here.

9 If not, if this Board as constituted is
10 subject to different rules, and it may be that the
11 Board perceives that that is the case, parties and
12 legal counsel should know that. Our clients and we, as
13 lawyers, should know that throughout the course of the
14 balance of the proceeding.

15 THE CHAIRMAN: Well, if I might just
16 interrupt--

17 MS. CRONK: Yes, Mr. Chairman.

18 THE CHAIRMAN: --Ms. Cronk, there is
19 something that this Board member recalls, and
20 unfortunately his memory is not as accurate perhaps as
21 it might otherwise be, but I believe this issue was
22 also addressed by the Supreme Court of Canada in the
23 Cruise Missile case--

24 MS. CRONK: You are correct, sir.

25 THE CHAIRMAN: --dealing with one of the

1 counsel who, outside of the case before the court, was
2 discussing aspects of the case in the media, and I
3 believe the Chief Justice at the time - I believe it
4 was late Bora Laskin - indicated, I don't know whether
5 it was by way of a formal proceeding or otherwise, what
6 the appropriate standard was in terms of counsel
7 dealing with the press during the time that a case was
8 before the court.

9 MS. CRONK: You are quite correct, sir.
10 Your recollection is indeed sound and accurate and I
11 have reviewed that case. The primary issue was
12 slightly different in the sense that it dealt with
13 initiation of contact with the media, but nonetheless
14 you are quite right, that the Chief Justice of the
15 Supreme Court of Canada did articulate a standard of
16 conduct that was expected and a rather clear censure
17 was indicated in the remarks of the Chief Justice of
18 the conduct of the lawyer involved.

19 And if the Board would regard it of
20 assistance we will provide the copies to you.

21 THE CHAIRMAN: I think the Board would
22 like that case before it as well--

23 MS. CRONK: We will provide that, sir.

24 THE CHAIRMAN: --at such time as we deal
25 with this matter.

1 MS. CRONK: We'll have it copied, sir,
2 and provide it.

3 I should say, sir, that the issue of
4 initiation of contact is not the issue that we place
5 before you, and you will be aware certainly, Mr.
6 Chairman, that that matter has been thoroughly looked
7 at and has resulted in a new rule of the Law Society
8 that specifically deals with initiation and when that
9 is or is not appropriate, and that is not the issue put
10 before you.

11 THE CHAIRMAN: And we might as well also
12 have the rule before as well to save us having to look
13 it up.

14 MS. CRONK: We will provide that as well,
15 sir.

16 To return then very briefly to the issue
17 of whether a formal Notice of Motion is required. We
18 are not seeking, Mr. Chairman, from the Board a formal
19 order; we are not seeking a contempt application under
20 Section 13 of the Statutory Powers Procedure Act.

21 THE CHAIRMAN: We understand that.

22 As we understand what you are seeking,
23 Ms. Cronk, it's basically: After looking into this
24 matter and offering counsel an opportunity to address
25 it, a clear statement from the Board as to what it

1 considers the appropriate standard of conduct should be
2 with respect to counsel appearing before this Board.

3 MS. CRONK: That is completely correct,
4 sir.

5 THE CHAIRMAN: And it would go no further
6 than that as far as this Board is concerned.

7 MS. CRONK: That is our submission, sir.

8 THE CHAIRMAN: But that still begs the
9 question as to whether the other counsel who are not
10 here specifically should be notified, the other parties
11 represented by counsel who are perhaps not the regular
12 parties that appear on a regular basis.

13 MS. CRONK: Our suggestion and our
14 submission to you is this, sir: First, that a formal
15 Notice of Motion, as I indicated in our submission, is
16 not necessary for the reasons that I have given you and
17 for the precedent that I have provided. Clearly any
18 counsel who wishes to address this matter, in our
19 submission, should be heard and their submissions
20 received by the Board.

21 Because this matter involves legal
22 counsel and the duty of legal counsel, if the Board is
23 inclined to indicate that notice of a time to receive
24 submissions from others will be fixed then, of course,
25 we will willingly comply with that and our suggestion

1 would be that we inform all other legal counsel and
2 parties represented by legal counsel that the issue is
3 going to be dealt with in that fashion.

4 THE CHAIRMAN: I think that would
5 probably be appropriate, just to make sure that all
6 counsel who wish to address the matter have the
7 opportunity to do so, and also that all counsel who
8 might be affected by the Board's articulation of the
9 standard of conduct are also aware of it.

10 MS. CRONK: I'm sorry, sir.

11 Mr. Chairman, the other matter that I
12 said, the other consequence of this that we wanted to
13 address very briefly this morning, has to do with the
14 suggestion made yesterday by Ms. Seaborn as to the
15 impact that an issue of this kind will have on the
16 negotiations that the Board has directed should take
17 place in February.

18 We indeed are also very concerned about
19 that, but ironically from the converse position than
20 Ms. Seaborn. The fact of the forthcoming negotiations
21 was a relevant consideration in the determination to
22 bring this matter to your attention and it is for this
23 reason, sir, we are worried about precisely the reverse
24 consequence that Ms. Seaborn suggested.

25 If this matter is not clarified and the

1 rules are not clearly understood, several parties may
2 have reason to doubt the value of the negotiating
3 process; that is our concern.

4 As Mr. Cosman indicated in his
5 submissions in Toronto, our client and we, as their
6 counsel, are willing to participate in that process and
7 will do so and will act with respect to all parties in
8 good faith, but it is necessary that all parties
9 involved be able to approach one another in good faith
10 and know throughout that process that they can rely on
11 well-recognized rules or well-established rules of what
12 conduct will apply.

13 It is our submission that before those
14 sessions take place it may well be that some guidelines
15 should issue from the Board as to what the rules are
16 with respect to them. But the matter we raise now goes
17 beyond the negotiating sessions, it is simply
18 exemplified by the nature of the problem that can arise
19 with the negotiating sessions.

20 But it goes beyond that and has to do
21 with the entire course of the remainder of the
22 proceedings before the Board. And, in essence, what we
23 are really saying to the Board is that the parties and
24 counsel and their clients have to know that they can
25 deal with each other in good faith, they have to know

1 what the rules are, because the rules for one have to
2 be the rules for all.

3 And it's for those reasons, Mr. Chairman,
4 that we have suggested to you that the matter need not
5 be as formalized as Ms. Swenarchuk is suggesting, that
6 there is straightforward solution, that it is that put
7 forward and followed by Mr. Justice Grange, that you
8 should know what has in fact in the past been said and,
9 for that purpose, those articles and the correspondence
10 has been provided to you, and that indication that an
11 undertaking that an effort will be made for them not to
12 reoccur is an appropriate response and we can go
13 forward, all of us, in good faith to deal with one
14 another throughout the course of the remainder of the
15 proceeding.

16 Now, I've understood you, Mr. Chairman,
17 to say that a notice to all other legal counsel would
18 be appropriate. Do you wish that notice to come from
19 us, or does the Board wish to indicate a date upon
20 which it will receive submissions from other counsel
21 and...

22 THE CHAIRMAN: Excuse us one moment.
23 ---Discussion of the record

24 THE CHAIRMAN: Ms. Cronk, I think what
25 the Board would prefer is this: We might fix a date to

1 hear this, rather than next Tuesday we are going to
2 suggest the same date that we are going to deal with
3 the matter concerning the Board's jurisdiction and
4 powers to amend documents.

5 MS. CRONK: That's next Tuesday.

6 THE CHAIRMAN: Oh, that is next Tuesday.

7 MS. CRONK: That's why that date was
8 discussed between Ms. Swenarchuk and ourselves. It was
9 precisely for that reason.

10 THE CHAIRMAN: I warned you my memory was
11 faulty.

12 MS. CRONK: There's an obligation on
13 counsel to help you there too.

14 THE CHAIRMAN: All right. That would
15 probably be the appropriate date, so we aren't cutting
16 into any more of the evidence and we can use that
17 entire afternoon to deal with both issues.

18 MS. CRONK: Thank you, sir.

19 The other reason, sir, that I could point
20 out as to another reason it may be appropriate is
21 because Ms. Swenarchuk did indicate she would be here
22 and you will see that from the correspondence.

23 THE CHAIRMAN: All right. And then as
24 far as the the notification, I believe a notification
25 from you to all of the counsel involved in this case

1 indicating that submissions will be made to the Board
2 on that date regarding the standard of conduct to be
3 exercised by counsel in dealing with the media
4 throughout the rest of this case will be discussed.

5 MS. CRONK: Thank you. Service has
6 effectively been accomplished right now, right now this
7 morning on all counsel who are present in the room.

8 THE CHAIRMAN: Yes.

9 MS. CRONK: Service on other counsel who
10 are not, I would ask that I'll need short service, but
11 we will get it out by fax.

12 THE CHAIRMAN: Yes, that would be
13 granted.

14 MS. CRONK: Thank you very much, sir.

15 THE CHAIRMAN: Okay.

16 Mr. Lindgren, do you have anything to say
17 on behalf of Ms. Swenarchuk with respect to what has
18 occurred here?

19 MR. LINDGREN: Very briefly, Mr.
20 Chairman.

21 It is not my intention to deal with the
22 substance of this matter; however, I would like to very
23 briefly comment on some of the statements made by Ms.
24 Cronk this morning.

25 I can, first of all, indicate that it

1 will be our position when this matter will be held that
2 this is not the appropriate forum. We take no issue
3 with the jurisdictional points raised by my friend.
4 This Board does have the jurisdiction to deal with the
5 matter, but whether or not this is the appropriate
6 forum is, of course, another issue.

7 For example, my friend earlier this
8 morning has suggested that there have been some
9 inaccuracies in the articles that she takes offence to.
10 I suggest that her remedy or her more proper remedy is
11 to take that up the journalist or perhaps go to the
12 Ontario Press Council. I just --

13 MS. CRONK: I won't do that when she
14 wrote the article.

15 MR. LINDGREN: Maybe not with respect to
16 the article authored by Ms. Swenarchuk, but certainly
17 with the articles that appeared in the media.

18 As well, I can indicate it will be our
19 position that Ms. Swenarchuk has at all times acted in
20 a responsible and professional manner.

21 Now, getting to the issues that I raised
22 yesterday, I must repeat my submissions and I have to
23 support what Mr. Edwards said in relation to the need
24 for formal notice, and having regard to the nature of
25 the relief that is sought, it is our position that

1 proper notice should go to the parties and when I say
2 proper notice, I mean a formal Notice of Motion.

3 THE CHAIRMAN: All right. But what would
4 that formal Notice of Motion take; what form would it
5 take?

6 MR. LINDGREN: At the very minimum, Mr.
7 Chairman, I would suggest that this motion must contain
8 reference to the portions of articles that Ms. Cronk
9 takes exception to; further, the Notice of Motion
10 should in some fashion indicate how these comments can
11 be construed as prejudicial to the parties, to her
12 client, to counsel, or to the Board itself.

13 THE CHAIRMAN: Well, wouldn't those
14 comments be better left to the actual submissions when
15 the Board deals with it?

16 Isn't the purpose of the Notice of Motion
17 essentially, to indicate to parties that a certain
18 issue is going to be raised formally before the Board,
19 submissions will be made at such and such a time,
20 without having to create, especially in these
21 proceedings, a complete paper trail by way of the
22 Notice of Motion itself.

23 In other words, if these matters are
24 going to be dealt with by the Board at a session held
25 for that purpose, those obviously will be the substance

1 of the arguments put before the Board. Why should they
2 be put necessarily in written form in Notice of Motion
3 and distributed to all the parties?

4 I think what the Board is more interested
5 in, Mr. Lindgren, is ensuring that if the Board is
6 going to hear the matter, that the parties are notified
7 that the issue will be raised and discussed.

8 MR. LINDGREN: I think that the Board
9 should also be concerned that Ms. Swenarchuk be
10 properly informed of the allegations that were made
11 against her.

12 To this point all we have received are
13 copies of the articles without any indication which
14 portions of those articles are offensive. It's my
15 submission we can't be in a position to respond in a
16 meaningful way to those kinds of vague allegations.

17 These allegations, as I indicated
18 yesterday, are quite serious in nature and I think in
19 fairness to Ms. Swenarchuk and other parties we should
20 have some idea as to why these articles are offensive
21 and, in particular with respect to the relief that is
22 being sought by Ms. Cronk, I think we should have some
23 clearer indication of precisely what she is asking this
24 Board to do, or -- let me be a little more specific on
25 that.

1 She has indicated that she wants the
2 Board to provide some sort of guidance or direction
3 with respect to the issue of counsel speaking on the
4 conduct of other counsel or the Board or counsel
5 speaking on the nature of the evidence or other parties
6 or the fairness of the proceeding itself. I, for one,
7 would like to know precisely what she is proposing, and
8 I would also suggest that there are a number of other
9 counsel not present here who would also have an
10 interest in this matter, who would also like to be
11 advised up front as to what precise direction Ms. Cronk
12 is looking for.

13 THE CHAIRMAN: Well, as I understand it -
14 and correct me if I am wrong, Ms. Cronk - precisely
15 what you are asking for is a clear statement by the
16 Board of the standard of conduct that should be
17 applicable in this proceeding with respect to counsels'
18 dealing with the media.

19 MS. CRONK: That is correct, sir.

20 THE CHAIRMAN: Does it go beyond that?
21 And an undertaking, as I understood it, that any
22 conduct which the Board might have viewed as
23 inappropriate will not occur in the future.

24 MS. CRONK: That is correct, sir, and
25 exactly...

1 THE CHAIRMAN: And no further, you are
2 not asking for the matter to be referred to the Law
3 Society by the Board, you are not asking for the Board
4 to exercise its powers under the Statutory Powers
5 Procedure Act for citation or anything else.

6 MS. CRONK: That is correct, sir. I
7 should point out that I --
8 ---Discussion off the record

9 MS. CRONK: Sir, perhaps I can deal with
10 it this way. That is what we are seeking, what you
11 have outlined. It is for that reason to make it very
12 clear that we provided the extract of Mr. Justice
13 Grange's ruling.

14 What we are seeking is at the bottom of
15 page 4496, 4497. We wish to know whether that applies
16 here, that rule applies here.

17 THE CHAIRMAN: Right.

18 MS. CRONK: And I'm sorry, sir, just one
19 other matter. Mr. Lindgren is quite correct that it is
20 fair to Ms. Swenarchuk that she know what portions of
21 these articles are complained of and that's why he was
22 given a highlighted version this morning.

23 THE CHAIRMAN: And are you asking the
24 Board in any way to make any kind of finding with
25 respect to what was said in those articles in view of

1 the conduct?

2 MS. CRONK: I leave that to be considered
3 by the Board, sir.

4 THE CHAIRMAN: Because the Board has
5 indicated previously that it would prefer, in order to
6 preserve what it considers to be the fairness and
7 integrity of this hearing, not to be placed in a
8 position of having to rule or indicate one way or the
9 other anything about what might have been previously
10 said.

11 What it would prefer to do, quite
12 frankly, is to obviously view the articles and then,
13 after hearing further submissions from all counsel,
14 including Ms. Swenarchuk, come out with a clear
15 statement of what it considers to be the appropriate
16 standard of conduct which would then carry forward.
17 And, obviously, all counsel in the future would be
18 expected to meet that standard of conduct.

19 And that, in effect, would accomplish the
20 end of not having anything that you particularly might
21 have found inappropriate occur again in the future.

22 MS. CRONK: Sir, I should just say this:
23 I had tried this morning to be careful not to get into
24 the actual language of the articles given the nature of
25 the concern that had been expressed. We are very

1 concerned as counsel for our clients about remarks that
2 have been made, factually they have been made about
3 other counsel and about other parties. This hearing is
4 not over and there's a long time to go.

5 So we are asking for an undertaking in
6 respect to future conduct. I have some difficulty
7 understanding conceptually how that undertaking would
8 be required of the Board if there wasn't consideration
9 of past conduct. But beyond that, as counsel for the
10 Attorney General did, we leave it in the Board's hands.

11 MR. LINDGREN: Mr. Chairman, I think I
12 will reserve the bulk of my comments until this matter
13 is heard. I would, however --

14 THE CHAIRMAN: Well, for Ms. Swenarchuk's
15 benefit, I take it, Ms. Cronk, we can say to her that
16 any of the material that has appeared in the media so
17 far that you are objecting to are outlined and
18 highlighted in the material you've provided to us?

19 MS. CRONK: Yes, sir.

20 THE CHAIRMAN: So that that will clearly
21 indicate to her, Mr. Lindgren, the parts of the
22 articles to which Ms. Cronk is complaining.

23 MRS. KOVEN: Well, I don't know if that's
24 the case; is it, Mr. Chairman? It will indicate with
25 what Ms. Cronk has disputes in terms of what she has

1 written, but I don't think it will give Ms. Swenarchuk
2 a very good understanding of why it's objectionable.

3 I mean, she can reread her own words with
4 highlighting on them, but I'm not sure that that gives
5 her a very good sense of why you are unhappy with it.

6 MS. CRONK: Mrs. Koven, all I can say is
7 that the Board is going to receive further submissions
8 on this from other counsel. I will address, in that
9 case, that the the Board view the specific contents of
10 the articles.

11 But I can say without qualification, Mrs.
12 Koven, if you look at a couple of the comments in those
13 articles, a counsel with the quite clear skills and
14 experience of Ms. Swenarchuk will have no difficulty
15 understanding why our clients and why we are upset by
16 some of the allegations made, and if some further
17 elaboration is necessary, I am more than pleased to
18 deal with it line by line.

19 MRS. KOVEN: Well, I am not sure if
20 that's the kind of elaboration we need, but I'm just a
21 little confused about how all this will work out in the
22 end in terms of us being able to say something about
23 the conduct of counsel and having individuals really
24 not know what it means at all.

25 MS. CRONK: Mrs. Koven, if the matter is

1 to be dealt with next Tuesday, and all parties now have
2 the highlighted version, I would be pleased to outline
3 in the course of our submissions what it is with great
4 particularity that we regard as offensive.

5 I think it is apparent, prima facie on
6 the face of it; others may not. But a Notice of Motion
7 under the rules would not accomplish that. I am not
8 required to do that in a Notice of Motion, so that
9 doesn't advance it.

10 THE CHAIRMAN: And that's the latter
11 point I was getting at, Mr. Lindgren, that we don't
12 want the submissions to be argued out in a Notice of
13 Motion; we are going to hear it, and if we are going to
14 hear it, we might as well hear the submissions of the
15 parties where they can be responded to by both the
16 Board and all the parties rather than having
17 documentation go out which would only probably require
18 documentation coming from other parties as well.

19 Tuesday is only a few days away, and we
20 can obviously deal with it at that time. We are more
21 interested that Ms. Swenarchuk is aware of the passages
22 which are alleged by Ms. Cronk to be offensive and that
23 all other counsel know that the issue will be raised on
24 Tuesday.

25 MR. LINDGREN: Mr. Chairman, that

1 actually is another one of my concerns.

2 Ms. Swenarchuk has indicated she will be
3 present, if necessary, on Tuesday; however, it may be
4 conceivable, or it is conceivable that a number of
5 other counsel who would like to be present will not be
6 able to be present because of the short notice.

7 I am wondering if it might be advisable
8 to perhaps fix a later date for this matter.

9 MS. CRONK: Sir, we don't even know yet
10 if others are interested in making the submissions.
11 Surely if there is a problem in that regard we can
12 bring it to the Board's attention and deal with it.

13 I just remind the Board that it was at
14 Ms. Swenarchuk's request that this matter was deferred
15 until next Tuesday in any event, as she told me that
16 was the only day in the next couple of weeks she was
17 going to be here. We didn't want to raise it without
18 her here.

19 If a counsel indicates that he or she
20 can't be here who wishes to speak on the matter, we
21 will undertake to inform the Board immediately once we
22 are advised that and then the Board can deal with it at
23 that time.

24 THE CHAIRMAN: I think that is probably
25 appropriate, Mr. Lindgren, because we are going to be

1 getting into Dean Baskerville's evidence shortly and
2 into other matters of evidence, that we don't want to
3 put this off too long.

4 I think it's in everyone's interest,
5 including the Board's, to have it out of the way and
6 disposed of one way or the other as quickly as
7 possible.

8 If there are some counsel that want to
9 address the Board and are unable to on Tuesday, then we
10 will hear about that and, if we have to, we will
11 obviously put off the discussion.

12 But let us try and see if we can't
13 accommodate it on Tuesday.

14 MR. LINDGREN: Thank you, Mr. Chairman.

15 And I am content with Ms. Cronk's
16 undertaking to advise the Board if other counsel will
17 have difficulty in making it.

18 Those are my comments.

19 THE CHAIRMAN: Thank you. Any other
20 comments from any other counsel?

21 MS. MURPHY: Not on the procedural
22 aspects of this, Mr. Chairman.

23 THE CHAIRMAN: Sorry?

24 MS. MURPHY: Not on the procedural
25 aspects of this, Mr. Chairman. I understand from you

1 people to take instructions in this matter and I wonder
2 if the Board could accommodate me by ensuring that I
3 can take that call at 1:10.

4 Just hoping that whatever we do at lunch,
5 I would be able to go and take a call around 1:10 and I
6 would like to advise you now if you could accommodate
7 me, I would appreciate it.

8 THE CHAIRMAN: Very well.

9 MS. MURPHY: And the witnesses were
10 discussing Document No. 2 and were about to begin a
11 short description of each of the projects that are
12 being undertaken at the provincial level.

13 And so I suggest we simply begin where we
14 left out.

15 CONTINUED DIRECT EXAMINATION BY MS. MURPHY:

16 Q. Mr. Straight, I understand you are
17 going to be giving a prescription of the tourism
18 project, you will be describing where previous
19 information can be found and giving a summary of the
20 current situation and status; is that right?

21 MR. STRAIGHT: A. That's correct, Ms.
22 Murphy. Before I start, is my voice projecting
23 properly?

24 Mr. Chairman, Members of the Board,
25 ladies and gentlemen. Ms. Murphy's right, yesterday

1 Dr. MacLean basically gave you some indication of how
2 we have assessed the potential effect of timber
3 management. He has talked to you briefly about why we
4 need a provincial program and related specifically to a
5 consideration of things like the difficulty in
6 detecting effects, the high standards of science that
7 are necessary to overcome some of these difficulties in
8 detection, and the costs that are involved. And, as
9 well, Mr. Gordon told you how the program is managed as
10 a set and how stakeholders basically are planned to be
11 involved.

12 What we would like to do now is take you
13 through each of the components, as Ms. Murphy has
14 indicated, and we would like to deal with each
15 component relative to how it deals with the effects of
16 timber management and the effectiveness of our actions
17 to prevent or minimize effects and show you how it is
18 deliverable.

19 At the end of the provincial -- at the
20 end of addressing the provincial effects and
21 effectiveness monitoring program, Dr. MacLean will then
22 review how the monitoring program and Ministry
23 direction is planned to be adaptive both to program
24 results and to new science and technology.

25 For the purposes of the record, I would

1 like to refer to overhead No. 15, I believe that's
2 Exhibit 933.

3 The effects of timber management
4 activities on tourism and a series of recommendation
5 for effects and effectiveness monitoring were discussed
6 in that March '88, ESSA Report, both on pages 168 to
7 210 and again on pages 222 to 224, and that has been
8 previously submitted as Exhibit 381.

9 MS. MURPHY: And for the record then
10 that's Exhibit 381, pages 168 to 210 and 222 to 224 for
11 the background information.

12 MR. STRAIGHT: Following from that report
13 and its recommendations, MNR structured a series of
14 technical meetings to look at focusing the design of
15 the program, to identify a number of deliverable
16 options, to look at costs and alternatives and
17 benefits, and to make recommendations for internal use
18 in deciding upon which direction an effects and
19 effectiveness monitoring should take.

20 That has been previously submitted as
21 part of Exhibit 915 which is the evidence statement and
22 occurs on page 504 to 530.

23 Exhibit 915, on pages 541 to 544, also
24 outlines the program for effects and effectiveness
25 monitoring of tourism that MNR has approved.

1 Exhibit 922, which was introduced earlier
2 in this panel, provided an update on October 5th, 1989
3 as to the status of the program.

4 The objectives of the tourism effects and
5 effectiveness monitoring program are essentially to
6 assess the effectiveness of Timber Management
7 Guidelines for the Protection of Tourism Values, to
8 assess the degree to which the guidelines address all
9 significant impacts of timber management, and to
10 recommend improvements to the guidelines based on this
11 assessment.

12 I would like to take you now to overhead
13 No. 16 of Exhibit 933.

14 As Dr. MacLean had indicated, Table 1,
15 which for tourism starts on page 441 of the evidence
16 statement, provides our best understanding of the
17 effects of timber management on tourism values. And I
18 would like to illustrate with the use of an example how
19 to interpret this table relative to tourism values and
20 to understanding how the provincial monitoring program
21 incorporates the results of the ESSA workshops.

22 MS. MURPHY: Q. So is it necessary to
23 look at that table, Mr. Straight?

24 MR. STRAIGHT: A. I think it would be a
25 good idea, Ms. Murphy.

1 Q. That is page 441 of the statement of
2 evidence?

3 A. Page 441, that's correct. And if
4 you go to -- has the Board found that page?

5 THE CHAIRMAN: Yes.

6 MR. STRAIGHT: If you go to Item No. 11,
7 which appears halfway down the page, you will see the
8 resource value under consideration, there is numbers of
9 clients and type of tourism business.

10 The next column indicates the timber
11 management action which is road construction. The
12 potential timber management effect is increased contact
13 with other users.

14 The particular situation being dealt with
15 there is the potential concern that road construction
16 will lead to increased contact with other users which
17 will lead to a reduction in the number of clients at
18 tourist establishments.

19 The workshop participants believe that
20 effect to be significant which appears in the fourth
21 horizontal column.

22 You see under resource protection
23 guidelines that indeed the situation is covered or
24 addressed in the Timber Management Guidelines for the
25 Protection of Tourism Values. There are no other

1 guidelines in this particular instance that were
2 considered pertinent.

3 And you will see that in the next two
4 horizontal columns is the 'yes' indicated in both
5 cases. In the one case -- in the first instance the
6 'yes' indicates that that particular situation or
7 effect will be studied, or is incorporated for study in
8 the provincial program and, as well, since there are
9 guidelines that were used in this particular instance
10 are in place to deal with the situation, the
11 effectiveness of the guidelines as well would be
12 assessed.

13 If you go through all of the values for
14 tourism that are expressed there, you will see that
15 basically in all but one instance the recommended
16 program for measuring the effects and effectiveness of
17 the guidelines to protect tourist values incorporates
18 those situations. The one situation which is not
19 planned to be included is that one that appears at the
20 bottom of that same page, 441.

21 Q. And we can tell then that it is not
22 intended to be included; am I correct, by looking at
23 the heading Effect Measured in Provincial Monitoring
24 Program, looking down the list, and at the bottom we
25 see that that one says 'no'?

1 A. That's correct. That's correct.

2 Q. Okay.

3 A. That one particular situation, Mr.
4 Chairman, deals with potential closures of roads and
5 harvesting areas to hunting under the Game and Fish
6 Act, Section 18 of the Game and Fish Act for the
7 protection and safety of workers.

8 The particular problem which was and the
9 workshops believed may occur was in a situation where
10 an area was closed to hunting in which a tourist
11 operator wished to accommodate his guests and that as a
12 result of that closure the operation may lose business.

13 The effect was addressed 'uncertain' by
14 the workshop participants. Under further consideration
15 of that, it has basically been MNR's opinion that
16 Section 18 is only used when it is necessary, that
17 quite often those closures do not apply for a long
18 duration in terms of a period of years anyway and, on
19 the other hand, there are limited numbers of tags
20 available to tourist operators and quite often lots of
21 places in which hunting opportunities exist and places
22 for them to put their clientele.

23 That particular concern, if it becomes an
24 issue, is quite readily dealt with at the local level.
25 And for those reasons we did not believe it was worth

1 incorporating in the provincial study.

2 I would like now to take you -- to
3 outline for you the basic approach in which -- as to
4 how the study is planned to operate and be conducted.
5 Throughout the ESSA workshops there were essentially
6 four basic situations or series of mechanisms in which
7 actions of timber management were believed to have an
8 effect on tourist operations; four hypotheses of
9 effect, if you will. The primary one that was
10 discussed was the one of road closure that I referred
11 to earlier, that No. 11 on page 441.

12 Q. So that's not the road closure one
13 you were talking about with respect to Section 18, this
14 is the opposite situation; is that right?

15 A. I'm sorry, I'm misleading you. It
16 was Item No. 11, the situation discussed there which
17 was increasing road access leading into potential
18 effect on tourist operations was the primary one
19 discussed at the workshops.

20 In the study we propose to look at 40
21 case studies which would include a distribution of the
22 types of tourist operations which exist in Ontario,
23 basically scattered throughout northern Ontario,
24 throughout the northern part of the province, and in
25 each of those 40 case studies we would be looking at a

1 series of business performance measures and tracking
2 them before, during and after timber management
3 operations occurred.

4 At the same time, we would be assessing
5 those factors of which we're aware that are important
6 to the tourist experience in bringing tourists back to
7 Ontario, and that includes things like fishing and
8 hunting success, the visual aesthetics of the area,
9 aesthetics relative to noise, and contact with other
10 users which, throughout the workshops, were identified
11 as a very important consideration, particularly for
12 remote tourism.

13 Our intention would be the same, relative
14 to measuring business performance factors, and that is
15 to assess these characteristics of the tourism
16 experience both before, during and after timber
17 management operations occurred. And we would be doing
18 this by a series of resource studies in terms of
19 assessing things like the quality of fishing, and we
20 would also be tracking the tourism -- how the tourism
21 clients see their experience through a series of
22 questionnaires to those tourist guests.

23 As Dr. MacLean indicated yesterday, there
24 are other actions which could produce somewhat similar
25 effects as timber management and it is important for us

1 to be able to assess whether other actions might be
2 interfering in our interpretation of results. And in
3 that context we plan on running a series of some 40
4 controls of similar types of tourist operations,
5 similarly distributed throughout northern Ontario,
6 which are not affected by timber management activities.
7 And, in this regard, we will get an indication of
8 whether or not there are trends that are occurring in
9 tourism in Ontario that would make it difficult to
10 interpret our case studies that we are looking at.

11 For example, things like the state of the
12 economy or weather patterns can have an adverse effect
13 on tourism and it is important to see the role that
14 they may play in interfering with the results of our
15 case study.

16 It was recognized when we developed the
17 program that there would be some refinement required,
18 that we were unable to do at this point in time, which
19 would require the intensive thinking of capable
20 scientists reviewing the program needs; things like
21 pilot testing of the questionnaire and confirmation of
22 some of the parameters we hope to measure of business
23 performance were a couple of the items that needed some
24 further testing and refinement. We felt that phase
25 would take one year, upon which we would look at

1 revising the program to reflect that knowledge with
2 full implementation occurring at that point and believe
3 that would take some nine years to complete.

4 THE CHAIRMAN: Is this one area, Mr.
5 Straight, where the input of the industry is most
6 important because it involves an area that is outside
7 the internal expertise of the Ministry, so to speak?

8 You are not dealing with wildlife or
9 fisheries or timber activities, per se, you are dealing
10 more with the business aspects of an industry that can
11 really only probably be best understood by those
12 involved in that industry on a regular and daily basis?

13 MR. STRAIGHT: That's correct, Mr.
14 Chairman. And to this point in time we have attempted
15 to bring the industry very much into developing the
16 program.

17 If you will recall, they participated in
18 the original workshops in the technical committee
19 meetings that were referred to earlier, their expertise
20 as well was required in terms of providing us with some
21 understanding of the dynamics of that industry and how
22 they could be required to assist us.

23 The actual program design, the conduct of
24 the study, the implementation of the study also depends
25 very highly on their cooperation in terms of providing

1 information to us.

2 THE CHAIRMAN: And have you gotten an
3 indication at this point that they are quite willing to
4 cooperate?

5 MR. STRAIGHT: Certainly the participants
6 that worked with us in developing it and their
7 organization, NOTOA, has expressed a desire to
8 cooperate and as well, of course, the Ministry of
9 Tourism and Recreation has been plugged in and involved
10 throughout.

11 THE CHAIRMAN: Thank you.

12 MRS. KOVEN: Mr. Straight, could you
13 please explain in some detail why it will take nine
14 years to revise and fully implement this program?

15 MR. STRAIGHT: There are a number of
16 practical problems here, Mrs. Koven.

17 First of all, it is going to take -- we
18 are looking at at least three years of beforehand
19 information on some of these values. We can obtain
20 some information by records from tourist operators, if
21 they -- to the degree that they keep good records,
22 which reflect the specific needs of the study, there is
23 the conduct of business during timber operations itself
24 which may take anywhere from one year to two or three
25 years realistically and simply because of the nature of

1 the timber operations in that particular area, there
2 may be access one year, there may be harvesting
3 operations the next, there may be renewal operations
4 following that in one or two years.

5 And also the ability to be able to detect
6 a change in tourism operations may take some time; for
7 example, it's fishing quality that's the primary
8 driving factor which directs whether or not tourists
9 return in that particular instance.

10 Depending on the nature of the access,
11 the vicinity, the population centres, the number of
12 other users that gain access or desire to gain access
13 to the lake may occur very quickly or may occur very
14 slowly, and similarly fish populations may respond very
15 quickly or very slowly depending on things like the
16 size of the lake, the amount of fishing pressure, the
17 type of fish species that are involved. So you may not
18 see an effect for -- you may see an effect immediately,
19 you may see an effect in three or four years.

20 The other thing that becomes important to
21 recognize is that we can't just go out and get 40 case
22 studies that lend themselves to adequate representation
23 here. We're, in many ways, dependent on how timber
24 management planning for timber management actions
25 occurs and it, as well, is going to mean that the

1 number of case studies that we bring into the study are
2 going to be staggered throughout that period.

3 I think -- I hope that gives you some
4 understanding of some of the practical problems
5 involved in running a study of that nature.

6 MS. MURPHY: Q. And just one question
7 following from that question. You had explained that
8 in addition to looking at the situation pre-timber
9 management activities for some period of time, you just
10 discussed looking at the situation during timber
11 management activities for a period of time which you
12 explained as being perhaps three to four years, and I
13 think you also explained the need to look at the
14 situation post-timber management activities; is that
15 correct?

16 MR. STRAIGHT: A. That's correct.

17 Q. Does that add to that period of time
18 as well?

19 A. Specifically the post-studies?

20 Q. Yes?

21 A. I believe that's what I was talking
22 to in terms of tracking things like fishing successes
23 or results of timber management activities having been
24 completed in the area and the need to study that for
25 some time simply because of the nature of the response

1 that may occur, yes.

2 Q. Thank you.

3 MRS. KOVEN: One more question, Mr.
4 Straight. Are you identifying 40 tourist operations,
5 tourism operations to use as controls that in fact have
6 not been affected by timber management?

7 MR. STRAIGHT: Yes.

8 MRS. KOVEN: And those controls will be
9 in northern Ontario?

10 MR. STRAIGHT: Yes, they would.

11 MRS. KOVEN: And they will be in areas
12 that have never been harvested?

13 MR. STRAIGHT: The intent would be to
14 select control areas in which timber management
15 activities would not be a factor in generating any
16 change, that's correct.

17 MRS. KOVEN: And you will also be
18 matching for the length of time they have been in
19 business?

20 MR. STRAIGHT: It may be required to keep
21 them for that length of time. It certainly would be
22 required to keep them for close to that length of time
23 and the exact -- the amount of time that you would need
24 do that would be something that would be a refinement
25 of the study design itself.

1 Mr. Gordon indicated to you yesterday the
2 process by which MNR intends to report results and to
3 manage the completion -- the implementation and
4 completion of the study in his presentation on
5 committee structure, and as well on that update of
6 October 5th, 1989, which is Exhibit 922, we provided
7 you with an indication of where we are at in that
8 program.

9 Currently, applications for the study
10 scientists have been received and my understanding is
11 that interviews to hire for that position are scheduled
12 for later in the month.

13 And as well, Mr. Gordon at the completion
14 of our presentation of our monitoring program will be
15 giving you an indication of funding status.

16 If I could take you now to overhead 17 of
17 Exhibit 933.

18 MS. MURPHY: And just before you do that,
19 for the record, I would indicate that the project with
20 respect to tourism is one of the subjects of draft term
21 and condition No. 52, just for your notes.

22 MR. STRAIGHT: This particular overhead
23 deals with MNR's program relative to heritage resources
24 and effects and effectiveness monitoring. And, as the
25 Board is aware, the Ministry of Natural Resources in

1 cooperation with Ministry of Communications and Culture
2 and Northern Development and Mines as well, plus some
3 other provincial interest groups, is in the process of
4 developing provincial guidelines to deal with the
5 protection of heritage resources.

6 I believe the Board had the opportunity
7 to review a previous draft that had been submitted. My
8 understanding is that the deliberations of the group
9 working on developing those guidelines is now at the
10 fourth draft stage, they are currently in the process
11 of receiving comments from the workshop participants on
12 that draft, that they expect to have a copy available
13 for broader distribution and comment in the near
14 future.

15 I would like to refer you basically to
16 page 188 of the Class Environmental Assessment. Just
17 verbally, I don't think you need to look it up, but on
18 that particular page MNR expresses its commitment to
19 assessing the effects and effectiveness of guidelines
20 and to revising the guidelines on the basis of new
21 knowledge.

22 And it is our position that MNR will
23 develop a monitoring program for those assessments of
24 the effectiveness of the guidelines to protect heritage
25 resources following approval of that particular

1 guideline set.

2 THE CHAIRMAN: Well, aren't you faced
3 with the dilemma that once the guidelines are approved
4 there is a lapse of time until people become
5 comfortable in applying them or know how to apply them,
6 and before you can really evaluate whether they are
7 effective or not they have to be in force for some
8 time. Is that not the case?

9 MR. STRAIGHT: I guess, Mr. Chairman, I
10 would like to make a couple of observations.

11 First of all, MNR working with the
12 heritage community and with local stakeholders, local
13 interest groups is in the business of identifying
14 heritage resources in applying modified prescriptions
15 or applying conditions to protect those resources at
16 the current time. And in my talk later on, or my
17 evidence later on I intend to give you some indication
18 how the local effects and effectiveness monitoring
19 program is occurring.

20 THE CHAIRMAN: Is what you are saying
21 though that the guidelines will really just consolidate
22 in one place what you are already doing and, therefore,
23 you can evaluate their effectiveness because you are
24 really evaluating the type of treatment that you are
25 already giving to heritage resources?

1 MR. STRAIGHT: It's going to provide an
2 awful lot more focus and perhaps look at a much
3 broader -- look at the entire range of potential
4 heritage values. It's extremely difficult to get a
5 good idea or indication of what kind of a monitoring
6 program might be appropriate until you see the final
7 approved guideline.

8 We notice that in terms of the extreme
9 intensive thinking we went through during the ESSA
10 workshops, that it is fairly important to have a
11 critical understanding of how those guidelines are
12 constituted.

13 THE CHAIRMAN: I think we would like to
14 take a break at this time, if it's okay, Ms. Murphy.

15 MS. MURPHY: This would be an appropriate
16 time.

17 THE CHAIRMAN: Thank you.

18 ---Recess taken at 9:25 a.m.

19 ---On resuming at 10:00 a.m.

20 THE CHAIRMAN: Thank you. Be seated,
21 please.

22 MS. MURPHY: Q. Just a couple of
23 questions arising from the Board's questions before we
24 go on to the next project.

25 Mr. Straight, with respect to your

1 evidence about the tourism projects, Mrs. Koven asked
2 you some questions. First of all, as I understand it,
3 she was asking you some questions about the length of
4 time that would be required for doing these studies and
5 you explained in your evidence that it would take
6 approximately nine years to do these studies; that's
7 correct?

8 MR. STRAIGHT: A. That's correct.

9 Q. And, as I understand it, she was also
10 asking you would the same length of time be required
11 for examining the control group; and, as I understand
12 it, you agreed that the studies on the control group
13 would probably take a similar length of time; is that
14 your evidence?

15 MRS. KOVEN: No, that wasn't the
16 question.

17 MS. MURPHY: Oh, well, that's my --

18 MRS. KOVEN: The question was, when you
19 are matching the controls with the cases, did you want
20 the same length of time they had been in business to be
21 a controlling factor.

22 In other words, you wouldn't want to
23 compare a case that had been in business for one year
24 with a control that had been in business for 25 years,
25 it would be a very different profile in those --

1 MS. MURPHY: That I think was probably
2 the substance then of our confusion. So the question
3 really is: Are the control situations intended to be
4 matched to the experimental situations to the extent of
5 looking at the length of time they had been in
6 business.

7 Q. Would you respond to that question
8 then, please?

9 MR. STRAIGHT: A. Again, and I agree,
10 Mrs. Koven, the intent is to match those kinds of
11 characteristics of the control and the study group to
12 ensure there is as much similarity as possible, and you
13 deal with that in the concept, the sample size that you
14 select in part so, yes.

15 Q. And in 40 situations then, the range
16 of types of operations and so forth would be fairly
17 large; is that correct?

18 A. The 40 case studies and the 40
19 controls would cover a range of distribution of the
20 length of time that the businesses had been in
21 existence and over that range you would expect the two
22 situations to be similar.

23 Q. Thank you. Then with respect to a
24 question that was raised by the Chairman - and these
25 were questions relating to the guidelines that are

1 being currently written for the heritage values - and
2 you advised the Chairman that heritage values are
3 commonly dealt with in timber management plans now;
4 that's correct?

5 A. That's correct.

6 Q. And my question is: Would you expect
7 that the matters dealt with in the new guideline would
8 meet exactly those matters that are dealt with
9 currently in timber management plans?

10 A. It's quite likely that they would
11 provide additional direction as well.

12 Q. And so would the monitoring program
13 that's developed have to consider that?

14 A. Yes, it would.

15 Q. Thank you. Now, Dr. MacLean is going
16 to be telling us about the projects on aquatic effects
17 and effectiveness.

18 DR. MacLEAN: A. I would like to turn to
19 page 128 of Exhibit 933, the overheads for Document 2.
20 I want to talk a little bit about the background of the
21 aquatic effects and effectiveness monitoring component
22 of the provincial program and then turn to looking at
23 objectives and approach and status of this component.

24 We started off by looking at effects of
25 timber management on fish and fish habitat and at the

1 effectiveness of the provincial Timber Management
2 Guidelines to Protect Fish Habitat. This was part of
3 the ESSA exercise which was recorded in Exhibit 381 and
4 discussed in Panel 8.

5 Following the ESSA exercise, we got
6 involved in technical meetings to further scope out the
7 study and the results of these technical meetings are
8 summarized on pages 481 to page 503 of Exhibit 915, the
9 statement of evidence for this panel.

10 During those technical meetings we looked
11 at two broad options for the course of the study. The
12 first was a sufficiency option which asked the question
13 of whether the guidelines are sufficient to protect
14 fish habitat and involved monitoring only habitat
15 measures.

16 The second option was the so-called
17 stringency option with which asked whether the
18 guidelines were optimal both to ensure protection of
19 fish and fish habitat and also to minimize losses of
20 timber available for harvest. And this option involved
21 monitoring of both fish and fish habitat measures.

22 The stringency option was recommended by
23 the ESSA -- by the technical meeting participants and
24 subsequently approved by the Ministry.

25 After the technical meetings, discussions

1 were held with scientists at the Ministry of
2 Environment who were concerned with water quality and
3 other aquatic biota as values to be protected during
4 timber management.

5 The objectives of the selected stringency
6 design were modified to include monitoring for these
7 values and a joint proposal was prepared. This
8 proposal is outlined on pages 532 to 536 of Exhibit
9 915, the statement of evidence for the panel. And it
10 is this proposal which is the subject of term and
11 condition No. 52. An update on our progress in
12 implementing the aquatic effects and effectiveness
13 monitoring program was provided on October 5th of 1989
14 and this is Exhibit 921.

15 The joint proposal from the Ministry has
16 two objectives which are, firstly, to assess
17 effectiveness of Fish Habitat Guidelines in protecting
18 fish and fish habitat, water quality and other aquatic
19 organisms; the second objective is to recommend
20 improvements to guidelines based on this assessment.

21 Turning to page 19 -- or overhead 19, as
22 we discussed earlier, MNR's summarized current
23 understanding of effects of timber management on fish
24 and fish habitat in Table 1. And I want to go through
25 a couple of examples which I have extracted from the

1 table onto this overhead to illustrate a few important
2 points about the aquatic effects and effectiveness
3 component of the provincial program.

4 The first example is No. 1 on page 438.
5 I don't think it is necessary to look on Table 1,
6 unless you want to reassure yourself that I copied it
7 correctly.

8 THE CHAIRMAN: We'll take your word for
9 it.

10 DR. MacLEAN: Good. A number of timber
11 management actions here; harvest, renewal and stream
12 crossings can cause the effect of increasing
13 sedimentation in streams which causes changes to the
14 substrate composition and thus affects survival of
15 stream fish eggs.

16 The ESSA participants thought that this
17 was a significant effect and that's indicated in the
18 fourth column. And the effect -- potential effect is
19 mitigated by three guidelines, those for fish habitat,
20 roads and water crossings, and the Code of Practice.
21 The effect will be monitored as part of the aquatic
22 program and the guidelines will be assessed as part of
23 the same program.

24 The second example is No. 4 on page 439.
25 Here the harvest of timber can increase the input of

1 fine organic debris into lakes which affects oxygen
2 levels and thus the survival of lake resident fish.

3 The ESSA participants thought that the
4 effect was uncertain. It has not been observed
5 previously, but it was possible. The Fish Habitat
6 Guidelines and Code of Practice would protect this
7 effect from occurring. The effect will be monitored as
8 a component of the aquatic program and the guidelines
9 will be assessed for effectiveness.

10 There are three points I want to make
11 about Table 1. The first of these is that there are 21
12 potential effects about the aquatic environment listed,
13 and 13 of those were judged to be significant by the
14 ESSA participants. All 13 of those will be measured as
15 part of the proposed aquatic monitoring program.

16 The second point is that more than just
17 the Fish Habitat Guidelines will be assessed. As the
18 table indicates, components of the roads and water
19 crossings guidelines and the Code of Practice will be
20 assessed at the same time.

21 The third point is that impacts on water
22 quality and other aquatic biota are, for the most part,
23 not included in Table 1 which was based on the ESSA
24 exercise. Evidence on effects on these values however
25 was presented in earlier panels.

1 THE CHAIRMAN: Dr. MacLean, is the
2 introduction -- well, perhaps you can't argue its
3 introduction, but has increased sedimentation ever been
4 dealt with under the Fisheries Act as a deleterious
5 substance under that Act against which there is a
6 prohibition, as I understand it?

7 DR. MacLEAN: As I understand it there
8 is, and certainly the Fisheries Act is meant to deal
9 with those sorts of situations.

10 THE CHAIRMAN: So in addition to the
11 guidelines you would have to be looking at, to some
12 extent, where these activities may be impacting upon
13 what is set out in the legislation; i.e. the Fisheries
14 Act, in terms of affecting fish populations and stream
15 fish eggs and those kinds of things; is that correct?

16 DR. MacLEAN: Yes, you would.

17 MRS. KOVEN: Dr. MacLean, could you
18 remind me whether the project proposal makes any
19 provisions for doing joint field work with the Ministry
20 of the Environment in terms of sample collection or
21 analytical facilities and that sort of thing?

22 DR. MacLEAN: Yes. I think as laid out
23 in the project design which is outlined -- let's see,
24 pages 532 to 536, the complete program is a joint field
25 data collection with the Ministry of Environment and

1 they are involved in design and so on of the project.

2 THE CHAIRMAN: Whose responsibility is it
3 for water quality? I know the Ministry of Environment
4 of course has that jurisdiction to look at water
5 quality, but you would also have that jurisdiction in
6 terms of the Ministry being involved in the enforcement
7 of the Fisheries Act; is that correct?

8 DR. MacLEAN: That's correct. Our
9 understanding of jurisdiction would be that we would be
10 responsible for fish habitat, so water quality as it
11 affects fish.

12 THE CHAIRMAN: Well, it is hard to
13 separate the two; isn't it?

14 DR. MacLEAN: It is hard to separate the
15 two.

16 Turning to page 20 of Exhibit 933, the
17 current understanding of effects on fish and fish
18 habitat, water quality and other aquatic biota has been
19 captured in 12 hypotheses of effect or questions which
20 are summarized on page 533 of the statement of evidence
21 for Panel 16, Exhibit 915.

22 We want to address these hypotheses
23 through an experimental design that involves five
24 treatments in which reserve width and crossing type are
25 varied, three study areas; cold water lake trout lakes,

1 warm water walleye lakes, and cold water brook trout
2 streams, and six categories of measurements ranging
3 from hydrology to fish populations.

4 We have also accepted another
5 recommendation from the ESSA exercise that we continue
6 what we started with that exercise of managing the
7 project in an adaptive way, looking at the results
8 coming from the program, frequently in light of what
9 our objectives are, and modifying the program as
10 needed. The proposed study would take 12 years,
11 including monitoring prior to and after the
12 experimental treatment.

13 The current status of the aquatic program
14 was reviewed in the October 5th update. MNR has funded
15 initiation of its part of the joint program and MOE has
16 continued to continue in its participation.

17 The first target is the preparation of a
18 detailed study design for the cold water lake trout
19 portion of the program, including selection of a study
20 area, aquantitative estimate of what size of effect can
21 be detected by the proposed design, a detailed budget,
22 et cetera. This detailed study design must be reviewed
23 and approved by the planning, stakeholder and steering
24 committees that Mr. Gordon discussed yesterday before
25 we can implement the cold water portion of this.

1 Staff have been hired by MNR and will be
2 assigned by MOE to make up the cold water design team
3 and their discussions are just starting.

4 And that's the end of my discussion of
5 aquatic...

6 Q. Thank you. Now, I understand that
7 there are at least three components that fall under the
8 category of wildlife and Dr. Euler is going to be
9 explaining those; is that right?

10 DR. EULER: A. Yes. Thank you.

11 If you will look at page 21 of Exhibit
12 933, we will just briefly show you how we have
13 organized the wildlife components of our effectiveness
14 monitoring study.

15 You will recall we talked about featured
16 species management and that moose and deer were
17 featured species. So we are using this term 'other' to
18 mean all species other than moose and deer, and part of
19 our approach here is to check our featured species
20 approach and see if it is doing what we intend it to
21 do, as well as to conduct some basic population
22 monitoring to be cognizant of the effects that may
23 occur on wildlife through timber management.

24 So I would like to address each of these
25 components in order and give you some more detail about

1 it and refer you to places in the evidence where you
2 can find more detail, if you wish.

3 So on overhead 22, we will start by
4 looking at moose and you will recall that in the update
5 of October 5th, which is Exhibit 920, we have given you
6 in considerable detail what this project is all about.
7 This is titled Moose Guidelines Effectiveness
8 Monitoring. So if we say MGEM some time you will know
9 what we are referring to.

10 There are four questions that this
11 project will be attempting to address and these
12 questions were derived out of a very similar process
13 that the tourism, heritage and aquatic effects were
14 derived from; that is the ESSA exercise which I won't
15 go into detail, but it's in Panel 8, Exhibit 381, then
16 we had subsequent workshops that were listed in the
17 statement of evidence for Panel 16 on page 462 and, of
18 course, in the update.

19 And from this process of considering the
20 hypothesis of effect, we came up with four basic
21 questions that we would organize the study around.
22 Those questions are: What is the current state of
23 moose habitat across the range in Ontario, how do moose
24 use the habitat that they occupy, and how does
25 variation in that habitat affect the health, survival

1 and productivity of moose.

2 And, last, we would like to put this
3 altogether and see how all these sources of information
4 fit to enhance our ability to predict the response of
5 moose populations to future timber management and
6 particularly being aware of how hunting management and
7 other programs interact with our habitat management
8 programs.

9 You may recall the analogy, the two six
10 guns and this is our attempt to see which of those six
11 guns is hitting the target.

12 Now, these four questions then lead into
13 four tasks which are outlined in page 23 of the Exhibit
14 933 and these are tasks that have already been
15 initiated. The details are on page 4 and subsequent
16 pages on Exhibit 920.

17 And just to highlight the basic task, the
18 first task is to demonstrate whether guideline areas
19 contain a greater supply of important habitat features
20 than non-guideline areas, basic information that we
21 need to collect to understand what's happening.

22 Q. Can you explain for us the
23 distinction then between -- or what you mean as the
24 distinction between guideline areas and non-guideline
25 areas?

1 A. That's right. Okay. These would be
2 areas where the principles encompassed in the Timber
3 Management Guidelines for the Provision of Moose
4 Habitat have been implemented on the ground. So you
5 may recall some of our discussion about what those
6 principles are, and we'll find areas where they are on
7 the ground and study them and call them "guideline
8 areas".

9 Then we would like to demonstrate in task
10 2 how individual moose use that habitat, what kind of
11 places are important for protection against winter
12 weather, where the food comes, something about the
13 quality of the food. And in the third task, try to
14 understand how variations in this habitat affect moose
15 condition, survival and reproductive output, because
16 after all that is why we are trying to manage the
17 habitat, is to influence how the moose survive and
18 their productivity.

19 And then the last task corresponds to the
20 fourth question: How to put this altogether to make it
21 fit into our management program where we can evaluate
22 what we are doing in the habitat side of our management
23 activity and understand how our management of hunting
24 fits with that. And the basic tool that we will be
25 using there is simulation modelling to use computers to

1 bring all this information into a venue that we can
2 understand, manipulate and use.

3 Now, funding has been committed to this
4 program and requests for funding will be initiated in
5 the future. Mr. Gordon is going to tell you more about
6 that later in this panel. An experimental design
7 scientist has been hired and will begin his duties in
8 January of 1990.

9 We expect continued involvement in the
10 stakeholder groups in this on the technical committee,
11 we expect to be having outputs of this work throughout
12 the course of the study, probably the first outputs
13 would be expected in late 1990 when there would be
14 progress reports, perhaps some initial computer models
15 or other kinds of short reports from the work, but it's
16 clearly planned to have a solid program of
17 communicating what's happening in that project to all
18 interested parties.

19 THE CHAIRMAN: Okay. If I might just
20 interrupt here for a moment, Dr. Euler.

21 Ms. Murphy, the Board appreciates the
22 fact that this effectiveness monitoring program is very
23 much in the developmental stage, parts from what we
24 have heard are presently being carried out and in
25 fact other parts have been conducted in various levels

1 by the Ministry for some years.

2 When you take a look at the Environmental
3 Assessment Document, Exhibit 4, page 199, it refers at
4 the bottom that:

5 "The second phase of the project will
6 involve the implementation and delivery
7 of the monitoring program developed in
8 the first phase."

9 And at the time this document was
10 prepared you didn't have that information as to the
11 details of the program which we're now receiving.

12 MS. MURPHY: That's correct.

13 THE CHAIRMAN: And as Dr. Euler just
14 mentioned, there might even be some outputs from some
15 of the things that will be implemented prior to the end
16 of the hearing itself.

17 At some stage of the game, is there any
18 contemplation by the Ministry of putting before the
19 Board and the other parties a document containing all
20 of the details of the program, at least to the point
21 that it has been developed at that stage that such a
22 document were produced.

23 In other words, had you been to a further
24 advanced stage in developing this program at the time
25 the EA was produced, presumably it would have appeared

1 in the EA itself, and it is something that everybody
2 could look at and either take issue with or comment on
3 and the Board could evaluate as well.

4 Given the fact that this appears to be
5 the one area of the evidence that is really in a state
6 of flux --

7 MS. MURPHY: In a state of development in
8 any event.

9 THE CHAIRMAN: All right. State of
10 development, will there be any assistance at some point
11 for us to be able to determine what exactly is the
12 program and what aspects of that program have been
13 developed to the stage that it is going to be developed
14 and what aspects are still to be developed?

15 MS. MURPHY: Well, I can speak to two
16 aspects of that that have definitely been considered
17 and are discussed at this point in time in the
18 evidence.

19 No. 1, in the draft term and condition
20 which speaks to the information that would be provided
21 on review of the environmental assessment, it states
22 that an update on all of these programs, given that
23 they are expected to take a number of years, would be
24 part of the information provided at that time.

25 So to the extent that you are asking

1 about reporting on the whole program, we have thought
2 about it and made that commitment at that level.

3 And the second thing that I would comment
4 on is that the commitment is also there to have
5 continuing involvement and reporting to the people that
6 are involved in these committees. So that's a second
7 part of that.

8 With respect to a specific consideration
9 of a further report to this hearing, it is certainly
10 something that we would take under advisement and I
11 would want to respond to that at some future time. It
12 would depend, for example, at what point we are putting
13 in reply evidence or at what point something could be
14 pulled together that would be of use.

15 THE CHAIRMAN: I guess what I am
16 concerned about is looking ahead to our task, which is
17 formulating a decision on this application. If we were
18 to address specifically, if approval were granted, a
19 monitoring program, you know, what would we say?

20 It would be difficult to allude to a
21 monitoring program as put forward by the Ministry in
22 their evidence when so many aspects of that program are
23 in the development stage without being very specific
24 and going through point by point what that program
25 would consist of.

1 MS. MURPHY: Exactly. If I might just
2 make one comment on that. It is our view, Mr.
3 Chairman, that when the terms and conditions of
4 approval are finalized that a great deal of thought has
5 to be put to what words are actually in terms and
6 conditions of approval, which things should be terms
7 and conditions of approval, which elements of this
8 discussion should be terms and conditions of approval
9 and which elements have to be left to allow themselves
10 to adapt.

11 At this point in time, we have put our
12 best efforts into setting out in term and condition No.
13 52 those things that, at this point in time, we can
14 commit and can suggest should be the details of those
15 terms and conditions.

16 It may well be, Mr. Chairman, that by the
17 end of this exercise there may be other elements that
18 could be added, but we always have to bear in mind that
19 whatever elements are added, they do not interfere with
20 the ability of these programs to develop.

21 THE CHAIRMAN: Well, perhaps it will
22 become clearer when the other parties' terms and
23 conditions are put forward, specifically with respect
24 to the monitoring program, because it just appears to
25 us at this point to be difficult to be able to try and

1 piece together totally what the program is in a way
2 that would find its way into any kind of decision. I
3 guess that is what I am concerned about.

4 MS. MURPHY: Yes. As I say, that's well
5 understood and that is why when we drafted terms and
6 conditions we have to keep in mind very much what we
7 believe -- I mean, clearly the terms and conditions of
8 approval are things that the Ministry has to do, and so
9 that the words that are put in there at this point were
10 very carefully thought through that way and bearing in
11 mind, you know, very much your concern that something
12 should be here and what exactly should it be.

13 THE CHAIRMAN: Okay. Sorry, Dr. Euler.

14 DR. EULER: Okay. No, that's fine. If
15 we could just go back to overhead 21 from Exhibit 933
16 just for a moment to remind you again of how we have
17 organized this, and speak briefly about the deer
18 effectiveness monitoring program. As we have discussed
19 with you, we have discussed at length how the moose
20 guidelines have gone through a very detailed and long
21 process of approval and, although the deer guidelines
22 are at the beginning stages of that approval process,
23 they have not developed very far, and we have not yet,
24 for example, sent them to our stakeholder group.

25 We anticipate getting those deer

1 guidelines out to our stakeholder groups approximately
2 December 31st of this year.

3 MS. MURPHY: Q. But you're discussing;
4 are you, a new draft of the deer guidelines?

5 DR. EULER: A. Yes, I am discussing a
6 new draft of the deer guidelines. I think you have
7 heard evidence that we've had a draft in place and we
8 now have brought the most recent science available to
9 us into that draft and we are learning, or doing our
10 best to couch it in terms that are understandable to
11 all parties who might be interested.

12 MS. MURPHY: And you recall there was
13 some evidence about that in Panel 12 and 13 from Mr.
14 Buss.

15 DR. EULER: After these guidelines have
16 gone through that approval process, we will initiate an
17 effectiveness monitoring program similar to, at least
18 in purpose if not in detail, the other programs.

19 That brings us then to the overhead on
20 page 24 of Exhibit 933 and I want to speak about how we
21 are going to conduct our other wildlife
22 effects/effectiveness monitoring program.

23 You will recall in previous evidence that
24 we talked about the featured species approach and how
25 we felt that the featured species approach provided

1 habitat for approximately 70 per cent of the other
2 wildlife that were in the area of the undertaking, and
3 that that left 30 per cent that were uncertain.

4 Now, one of the things that came up and
5 was brought to our attention by you, Mr. Chairman, was
6 the benefits issue. I would like to speak to that for
7 a moment. In my evidence and in Mr. McNicol's evidence
8 we talked about the fact that timber harvest did not
9 appear to have a negative impact on some wildlife
10 habitat, and then in our Panel 16 statement of evidence
11 we indicated that timber harvest will benefit most
12 wildlife species.

13 Now, those two positions are not entirely
14 consistent because benefit implies a greater value than
15 before an activity occurred, and perhaps a better way
16 to organize these concepts, that I hope will make it
17 somewhat more clear, is some wildlife species indeed
18 benefit from logging, often -- very often they benefit
19 from logging and the habitat that's provided by timber
20 management in general is good for them. An example of
21 a species like that is moose.

22 Other species appear to be neutral to
23 logging and they seem to be able to find their habitat
24 conditions whether timber management occurs in an area
25 or not.

1 The third category is made up of species
2 that are negatively affected by logging unless some
3 very stringent actions are implemented and a few seem
4 to be negatively affected.

5 Now, what we have tried to do to make
6 this clear is we feel about 70 per cent are either
7 benefitted or neutral to logging; the other 30 per cent
8 we are uncertain about, and that's why we need to
9 develop this effectiveness monitoring program.

10 So to summarize that, in Ontario we think
11 categories 1 and 2 make up most, that is approximately
12 70 per cent; category 3, about this 30 per cent, is in
13 a category that we have a high degree of uncertainty
14 about the impact of the timber management on these
15 creatures.

16 So in our effectiveness monitoring
17 program we want to begin the same process that we used
18 to work with the other values. So we want to and have
19 an ESSA type workshop where we identify hypothesis of
20 effect, where we carry this through to a plan of study
21 so that we can do an effects/effectiveness monitoring
22 program on both the 70 per cent, to confirm or alter
23 our judgment, and the 30 per cent to reduce that
24 uncertainty the best that we can.

25 The first step in this process is to hold

1 workshops and those we anticipate holding in early 1990
2 in which we will carry out the same process that the
3 ESSA workshops had. It will be impossible to study all
4 the species out there, so we will have to select
5 representative species from these groups.

6 MR. MARTEL: Could I ask a question. I
7 think you indicated when we were discussing earlier the
8 featured species approach that you could protect the
9 other 30 per cent by dealing with three or four other
10 specific examples.

11 Is it your intention - and I think that
12 was correct - when you are doing your 30 per cent, will
13 those be the examples that you will be looking at of
14 the other species out there that you have to protect
15 that aren't protected with the featured species
16 approach?

17 DR. EULER: Very likely, Mr. Martel.
18 Now, I don't want to make decisions before that
19 workshop occurs because it will be the purpose of the
20 workshop to refine the kind of judgments that I made
21 here and, in my judgment, yes, those will be very
22 prominent species in our deliberations.

23 Now, they could change slightly if the
24 preponderance of opinion at the workshop says: Well,
25 no, you were a little bit wrong Dr. Euler when you said

1 such and such and such.

2 THE CHAIRMAN: All right. Could we take
3 it though that regardless of what approach you are
4 going to come up with, if you end up choosing three our
5 four more representative species to cover off as much
6 as possible of the uncertain 30 per cent, it would be a
7 given that you will not cover every specie?

8 DR. EULER: That's correct.

9 THE CHAIRMAN: And likely you would never
10 be able to cover every specie out there?

11 DR. EULER: Yes.

12 THE CHAIRMAN: And that wouldn't be the
13 purpose of this type of monitoring program, you would
14 try to get as high as you can, you may even argue that
15 30 per cent isn't high enough and, therefore, you have
16 to go beyond 30 per cent and cut it down to 10 per cent
17 or 5 per cent, which remains uncertain, but the object
18 of the exercise is that there will likely in some way
19 be some species that will be negatively impacted,
20 period, and there is no way you could prevent against
21 that, save and except you should be able to identify
22 those species that might be able to be negatively
23 impacted and endangered.

24 DR. EULER: Yes, that's true, Mr.
25 Chairman.

1 THE CHAIRMAN: And, therefore, to the
2 extent that whatever the activities that are carried on
3 are, you would not be concerned supposedly with wiping
4 out some specie entirely. Would that be a fair
5 statement?

6 DR. EULER: I just didn't quite follow
7 that last phrase.

8 THE CHAIRMAN: Well, what I am saying is:
9 There is a regime out there that already tries to
10 identify and protect endangered species.

11 DR. EULER: Yes.

12 THE CHAIRMAN: And even if you came up
13 with three or four different representative species
14 you may be able to cut down the uncertainty to a lesser
15 percentage than the 30 per cent for what you are now
16 uncertain--

17 DR. EULER: Yes, that's true.

18 THE CHAIRMAN: --using the featured
19 specie approach--

20 DR. EULER: Yes.

21 THE CHAIRMAN: --that you are presently
22 using, but you will never close the gap entirely.

23 DR. EULER: Probably not.

24 THE CHAIRMAN: And so that what we will
25 end up with out of this ESSA workshop approach is the

1 scientist to be able to come back essentially
2 afterwards and say: Through featured species approach
3 we can protect one way or another 70 per cent, through
4 this additional study of representative species we can
5 probably protect another percentage of the remaining
6 30?

7 DR. EULER: Yes.

8 THE CHAIRMAN: Through the endangered
9 specie approach we can ensure that species will not be
10 wiped out or endangered?

11 DR. EULER: Yes.

12 THE CHAIRMAN: And there will always be,
13 at the end of the day, some degree of uncertainty with
14 respect to some species?

15 DR. EULER: That's correct.

16 THE CHAIRMAN: And scientifically that's
17 about as far as you - and I am asking you the
18 question - is that as far, scientifically, as you would
19 ever expect to be able to go?

20 DR. EULER: That's correct, Mr. Chairman.
21 That's right.

22 THE CHAIRMAN: Okay. Sorry, just to
23 follow, one further question. So it would not in your
24 view, or would it, be a valid criticism of any
25 monitoring approach to be able to say that unless you

1 could guarantee that there will be no specie impacted
2 negatively you shouldn't be carrying on the activity?

3 DR. EULER: Yes,

4 THE CHAIRMAN: I don't know if I have
5 worded that properly.

6 DR. EULER: I just want to make sure
7 that --

8 THE CHAIRMAN: A lot of negatives in
9 there.

10 DR. EULER: I think I agree with you.
11 Could I put it in my terms?

12 THE CHAIRMAN: Yes.

13 DR. EULER: You can never guarantee that
14 everything will always be protected.

15 THE CHAIRMAN: Okay.

16 DR. EULER: You can't do that. You can
17 do the best you can and you can reach high percentages,
18 but you can't guarantee everything is going to be
19 perfect all the time.

20 THE CHAIRMAN: And does it follow from
21 that that you would not be recommending as a scientist
22 in the wildlife area that you should not carry on
23 activities just because you can't guarantee one hundred
24 per cent that nothing will be impacted negatively?

25 DR. EULER: That would be my

1 recommendation as a scientist, yes.

2 THE CHAIRMAN: Okay.

3 MS. CRONK: Sorry, Mr. Chairman, sotta
4 voce just for the purposes of the future record, it
5 would be his recommendation that one would not
6 recommend?

7 I still don't think we've got the answer
8 matching. I think I understand what the witness is
9 saying, but I don't think -- forgive me, but...

10 THE CHAIRMAN: I believed him to say
11 something to that effect. Is that correct?

12 MS. CRONK: Really I am not trying to --
13 would it be or would it not be his recommendation,
14 that's...

15 THE CHAIRMAN: What would your
16 recommendation be, Doctor?

17 DR. EULER: That you not use any more
18 double negatives, Mr. Chairman, that would be my
19 recommendation.

20 I will try to put this as simply as I
21 can. No matter how hard you guarantee as a human
22 being, you can't guarantee that everything is going to
23 be perfect in the forest and I would not recommend that
24 we stop all activities in the forest because we can't
25 guarantee perfection.

1 MS. CRONK: Thank you, Dr. Euler.

2 THE CHAIRMAN: Thank you.

3 DR. EULER: The fifth overhead that I
4 would like to look at on page 25 of Exhibit 933 is an
5 update of our efforts in the area of population
6 monitoring, and you may recall that in previous
7 evidence we have talked about this as the need to keep
8 track of the populations of wildlife in the area of the
9 undertaking and ensure that they are viable, and we
10 also recall that viability was defined as long-term
11 stability.

12 We have six items that I would like to
13 briefly refer to you and they are also contained in
14 considerably more detail in Exhibit 923 that was given
15 to everyone on October 5th.

16 I want to just highlight two or three
17 main points of these studies to indicate that we have a
18 program in place already, it is embryonic, but we do
19 intend to let it grow into full adulthood.

20 The first one is our migrant bird study
21 and this is work that is conducted at Long Point
22 actually on Lake Erie where a peninsula of land juts
23 out into the lake and serves as a funnel that birds
24 must pass through before they come into Ontario, and
25 our work there is to develop indices of the abundance

1 of these birds, to keep track of what's happening to
2 the population.

3 By doing that every year one gets a sense
4 of how the populations are fluctuating and that's
5 helpful information in evaluation. It, of course, does
6 not prove the cause of the fluctuation, but it is
7 helpful to know that fluctuations occur.

8 Throughout Ontario the forestry arm of
9 our Ministry is working on a forest ecosystem
10 classification project. I think you have heard some
11 details of that. We would like to relate wildlife
12 habitat to that project. This helps us use a common
13 language between biologists and foresters, helps
14 extensively in making plans for timber management.

15 We have a project in the Temagami area to
16 look at the wildlife species associated with that
17 mature pine forest that's there and to recognize and
18 record the wildlife values that are in that kind of
19 forest.

20 In Algonquin Park, we have a very
21 long-term study of small mammals, something over 30
22 years of records of small mammal abundance in that park
23 and this is a very important piece of information for
24 basic understanding of wildlife populations. We intend
25 to evaluate that, we have supported it this year. I am

1 not sure just how long it will continue, but it has the
2 potential of continuing for a number of years in the
3 future.

4 We are also very concerned about
5 red-shouldered hawks and have initiated monitoring
6 programs of their population levels, as well as new
7 work to help develop some guidelines that would be
8 helpful in protecting the kinds of habitat that
9 red-shouldered hawks need.

10 And the last project on this overhead is
11 an overall population monitoring strategy, a committee
12 of MNR staff and outside experts with expertise in this
13 area, are working now to develop a strategy for a
14 comprehensive population monitoring program.

15 So, Mr. Chairman, that finishes my
16 evidence on the effects/effectiveness monitoring
17 program.

18 MS. MURPHY: And just before you finish.
19 With respect to those last two broad items that you
20 spoke to, first of all, the intention to look at the
21 featured species approach and how it affects other
22 wildlife, Mr. Chairman, you will recall at the outset
23 we advised that there would be an amendment to term and
24 condition 52, and that was intended to deal with that
25 part of the evidence.

1 And with respect to the last part of the
2 evidence, the Board should refer to draft term and
3 condition No. 57.

4 Q. Is that right?

5 DR. EULER: A. Yes, that's correct.

6 Q. Thank you. Dr. MacLean?

7 DR. MacLEAN: A. We talked about the
8 various components of the provincial monitoring program
9 for non-timber values and explained why we believe the
10 program is comprehensive and deliverable.

11 The final topic about that provincial
12 program that we want to discuss is to briefly summarize
13 the mechanisms and processes that we have put in place
14 to ensure the approach is adaptive, and I would like to
15 refer you to page 26 of the overheads, Exhibit 933.

16 In order to ensure that the approach is
17 adaptive, we need to ensure that we capture what we and
18 others learn about effects and effectiveness, that we
19 use that information to modify, if necessary, what we
20 do, and finally that stakeholders have the opportunity
21 to participate in decisions about the program where we
22 continue what we started in the ESSA exercise.

23 We have been careful in earlier panels I
24 think to distinguish between potential effects that we
25 thought were important or significant from those that

1 we are uncertain about, and the need for adaptivity is
2 based on that uncertainty.

3 It is clear that we know, we think that
4 we know the direction of the effect from published
5 studies and from our experience with timber management,
6 but there is still a great deal of uncertainty about
7 the size of the effect in the area of the undertaking.
8 There are three key sources of information which we
9 think will reduce that uncertainty. What we must make
10 sure is that we can learn from those sources as quickly
11 as we can.

12 The first source is the provincial
13 effects and effectiveness monitoring program which we
14 have designed to directly address the uncertainties and
15 our understanding. We have discussed the technical
16 planning, stakeholder, and steering committees that we
17 put in place to review and interpret new information as
18 it becomes available.

19 The second source is the local monitoring
20 program and in a few minutes Mr. Straight will describe
21 what types of information about effects and
22 effectiveness we can reasonably expect from this local
23 program and the mechanisms and processes we use to
24 ensure that that information is captured.

25 The third source of information is new

1 science and technology that's developed in programs
2 conducted elsewhere, either in other ministry programs
3 or in other areas of the world. This sort of
4 information is often published in scientific literature
5 but more often we find out about such studies through
6 personal contact, meetings or conferences.

7 We have discussed the roles of
8 specialists in the Ministry, the technology development
9 units and research and assessment units and in regions
10 whose job it is to review and transfer new science and
11 technology.

12 The specialists that have been hired to
13 implement the provincial program are particularly
14 important. They will be in contact with other
15 scientists doing similar work in other areas.

16 The second and we feel the most important
17 part of the adaptive approach is to use what we learn
18 to modify or change what we do. As you have heard, we
19 feel it is critical that we design the mechanisms and
20 processes that we put in place for resource planning
21 and decision-making, that those that we put in place
22 are flexible enough so that inevitable changes can be
23 accommodated. Too restrictive an approach might make
24 change difficult or impossible.

25 There are three broad areas of change we

1 might want to make at the provincial level. Firstly,
2 we might want to modify the direction of the monitoring
3 program and the terms of reference for the various
4 committees for the provincial monitoring program
5 include this responsibility.

6 At the local level, you will hear from
7 Mr. Straight about the responsibility of the district
8 managers to adjust monitoring programs as we learn what
9 works and what doesn't work. We might also want to
10 change guidelines or manuals to improve the way we
11 manage non-timber values.

12 The levels of uncertainties we have about
13 effects and effectiveness makes it likely that we will
14 want to make those changes in the next several years.
15 You have heard that the provincial steering committee
16 is responsible for recommending any changes to
17 guidelines to the Deputy Minister. Decisions about
18 when to make such changes must consider the risk to the
19 resource and disturbance to the planning process.
20 Finally, we might want to improve how we manage
21 non-timber values in relationship to timber management.

22 We may consider a wide range of changes
23 in how we manage these values. Examples might include
24 adopting habitat supply analysis or broadening the
25 timber management planning process to include

1 simultaneous planning for other resource values such as
2 wildlife. Whatever changes we want to make would have
3 to be consistent with the terms and conditions of the
4 approval for the class environmental assessment. So
5 the degree of flexibility in these terms and conditions
6 is important to us.

7 In earlier panels we have described the
8 mechanisms and processs for policy development and
9 review in the Ministry and it is these that we have
10 used to change how we manage timber for forests or
11 wildlife. We have committed to providing opportunities
12 for stakeholders involvement in how non-timber values
13 are managed, and there are a number of recent examples
14 of this, including the Fisheries Advisory Council, the
15 current exercise to modify a strategic plan for
16 fisheries in Ontario, and the wildlife working group
17 which has been appointed by the Minister to develop a
18 strategic plan for wildlife management in Ontario.

19 That ends our discussion of the
20 provincial component of the monitoring program.

21 Q. Mr. Straight, I understand you will
22 now be taking us through a short discussion of the
23 effects and effectiveness monitoring at the local level
24 and then that will end the discussion on Document No.
25 2; is that correct?

1 MR. STRAIGHT: A. That's correct, Ms.
2 Murphy. I would like to refer to overhead No. 27 or
3 page 27 of Exhibit 933.

4 You have heard from Dr. MacLean why it is
5 impractical to deliver the level of science required to
6 assess effects and effectiveness of timber management
7 activities at the local level; however, we have given a
8 lot of thought to how we can use local skills and
9 current technology to provide opportunities to make
10 observations about effects and effectiveness.

11 I hope to be able to show you some
12 examples of the types of observations which trained
13 staff are capable of making and how the opportunities
14 for making observations about effects and effectiveness
15 are provided at the local level.

16 We have discussed the provincial program
17 relative to its characteristics of being comprehensive,
18 adaptive and deliverable. I want to discuss the
19 component of the local effects and effectiveness
20 program in this same context.

21 The local program is comprehensive
22 because observations can be made for all areas in which
23 timber management occurs, timber management operations
24 occur. It is limited to detecting potential concerns
25 which are readily observable or detectable.

1 Observations of unanticipated concerns or problems will
2 be discussed by district staff to learn and to improve
3 the way in which we conduct timber management at the
4 local level.

5 I intend to illustrate for you the ways
6 by which these changes can occur. I will be talking
7 about the delivery of the components of these local
8 monitoring efforts and how they build on existing
9 programs and use the skills and experience of district
10 staff. These district staff are those which you have
11 heard extensive evidence about in Panels 7 and 8 and
12 which we have attempted to consolidate for you both in
13 terms of responsibilities, in terms of the distribution
14 of these staff, in terms of their qualifications and
15 how the Ministry goes about training these staff in
16 Exhibit 927 and Exhibit 924.

17 I would like to refer now to page 28 of
18 Exhibit 933. Basically there are four opportunities
19 for local effects and effectiveness monitoring and we
20 have defined those opportunities as area inspections,
21 stakeholder feedback, special studies, and local fish
22 and wildlife population monitoring.

23 I would like to talk a little about the
24 first one of those, area inspections, and that's on
25 page 29 of Exhibit 933.

1 Area inspections which are conducted to
2 measure compliance with conditions of approval will be
3 the main mechanism by which local effects and
4 effectiveness monitoring will occur. As discussed by
5 Mr. Cary, compliance monitoring for areas of concern
6 will be outlined in the timber management plan. This
7 condition is subject to MNR draft term and condition
8 No. 17. Mr. Cary also indicated that areas of concern
9 are mandatory and that's supported by another draft
10 term and condition, No. 49.

11 Area inspections will occur when we
12 conduct the planned compliance monitoring program or
13 when staff are responding to information from the
14 public. These inspections provide opportunities to
15 make observations on unanticipated problems or concerns
16 and are generally limited to what is readily seen or
17 heard.

18 I would like briefly to demonstrate the
19 types of observations which staff can be reasonably
20 expected to make in these situations, and if you will
21 bear with me and turn to page 438 of the evidence
22 statement, I will try and provide some more
23 explanation.

24 And this is the table we had briefly
25 discussed. And as we have said before, this table, as

1 do Tables 2 and 3, summarize our best understanding of
2 the potential effects of timber management. The last
3 column of all of those Tables 1, 2 and 3 indicate
4 whether local monitoring can be useful in providing
5 information on effects and effectiveness of timber
6 management.

7 In Table 1, in that last column where a
8 'yes' is indicated, that means that during area
9 inspections useful observations of this potential
10 effect may be possible. For example, as seen in the
11 first row of this table, staff may observe evidence of
12 erosion into a stream when conducting an area
13 inspection. They may or may not be able to observe
14 actual sedimentation of downstream spawning beds for
15 fish. For each potential effect listed in this table
16 similar assessments were made and a 'yes' or a 'no' was
17 recorded to indicate our ability to make observations
18 in each instance.

19 Without having to turn to the other
20 additional tables, I would like to make a few general
21 statements about them. For the terrestrial
22 environment, useful observations can be made following
23 timber management activities on whether our actions to
24 protect or maintain habitat features were sufficient;
25 for example, did we maintain the nesting tree and

1 vegetative buffer surrounding an eagle's nesting site
2 as a result of the prescription we applied.

3 For the socio-economic environment,
4 observations which staff might be expected to make
5 include such things as evidence of windfall or blowdown
6 on portages and hiking trails, evidence of increased
7 use of remote areas, evidence of visual aesthetics.

8 Normally when observations of concerns on
9 potential problems are made, staff with expertise in
10 that specific resource management area are usually
11 required to make additional investigations to judge the
12 potential significance of the situation and to review
13 the need and the possibility of mitigative or remedial
14 action.

15 Based on these investigations, timber
16 management actions may be modified if the activity is
17 in progress; or if the activity is finished, remedial
18 action may be taken. This may or may not require an
19 amendment to the timber management plan.

20 Should an amendment be required, the
21 district manager would use the appropriate procedure as
22 described by Panel 15 where they went into some depth
23 in terms of the amendment procedure. In this way
24 districts can respond to new information and can adapt
25 their local practices to achieve better protection of

1 resource values. It is those current district staff to
2 which we have previously referred that will be required
3 to make these types of observations.

4 They will report problems or
5 unanticipated situations on area inspection reports and
6 any follow-up reports of investigations will be kept on
7 project or area of concern files. As noted before,
8 significant problems or concerns will be summarized and
9 discussed in the report of past forest operations of
10 the new plan. Any action to resolve these problems
11 will be dealt with in the strategy section of that same
12 plan.

13 I would like to move on to page 30 of
14 Exhibit 933. The second component of the local program
15 is based on a very simple concept. When the public
16 advise us of problems or potential problems, we are
17 prepared to take action to confirm their observations.
18 Those observations by the public would likely result in
19 an area inspection being required. Should they confirm
20 that adjustments in practice is required to correct
21 unexpected problems, basically the same process as
22 outlined relative to the results of area inspections
23 would be utilized. The only additional characteristics
24 relative to this particular program is that normally
25 district managers would respond back to stakeholders on

1 the results of the action that MNR has taken and the
2 the results of any area inspections which would have
3 occurred.

4 THE CHAIRMAN: When you say normally, is
5 that going to be by way of a report, a phone call or
6 what?

7 MR. STRAIGHT: What we are considering in
8 this particular instance, Mr. Chairman, is an
9 appropriate form of feedback to the stakeholder.
10 Information from stakeholders can come to district
11 managers and district staff in many ways; it may be a
12 very formal letter, it may be a very casual
13 observation.

14 The implication here is, is that normally
15 district managers would return in kind; the letter
16 would receive a letter, an informal observation would
17 probably be responded to in the same manner.

18 The next opportunity to assess effects
19 and effectiveness at the local level we have termed
20 special studies. When I looked at this overhead last
21 night or reviewed it, I went to it, the first line, it
22 said 'situations' and I read 'special studies are
23 uncertain', and I am not sure that's the message I
24 wanted to convey.

25 But I think we know what I meant was that

1 while we are uncertain when special studies will occur,
2 the point is they are discretionary. There might be
3 specific circumstances where districts want to assess
4 the effects or the effectiveness of local timber
5 management actions and they would make a judgment as to
6 whether that was appropriate based on a consideration
7 of the socio-economic significance of potential
8 effects, the risk of decline or loss of local fish and
9 wildlife populations, cost and the availability of
10 fiscal and human resources. Now, should the result of
11 those special studies suggest the need to change local
12 practice, basically the previous processes which I
13 talked about would apply.

14 Another factor relative to adjustments or
15 adaptivity is important and that's that quite often
16 local studies or these special studies may suggest the
17 need for further research and, to some degree, Dr.
18 MacLean referred to his relative to the adaption of the
19 provincial program recognizing some of the research
20 needs coming from the local level that are fed up
21 through the organization to that -- for consideration
22 within that committee's structure.

23 I would like to say one other thing, that
24 basically in response to Forests for Tomorrow, their
25 Interrogatory No. 49, we provided a list of some 17

1 special studies conducted by MNR. Those studies range
2 from a creel survey to detect the use and types of
3 fishermen using a remote lake, for which measures had
4 been taken to protect remoteness during a time when
5 timber management activities were occurring which was
6 an attempt to assess the effectiveness of the actions
7 that we had taken, to what you have heard about before
8 from John McNicol, the glyphosate work in Thunder Bay -
9 and I promised Dr. MacLean I wouldn't say glyphosate
10 and I think I just lost five dollars, and it is all his
11 fault, Mr. Chairman - glyphosate work in Thunder Bay
12 which was undertaken to assess potential effects on
13 moose as a result of use of that material.

14 The delivery of the program would be
15 again undertaken by those staff which we outlined
16 earlier and the results of such work is reported in
17 scientific journals -- may be reported in scientific
18 journals, in MNR publications or depending on the level
19 of work that was undertaken, it may simply be kept as a
20 record in a report in the district office.

21 MS. MURPHY: Q. And if I might, I have
22 an old draft of this overhead and that word up there is
23 supposed to be undertaken, I believe.

24 MR. STRAIGHT: A. That's right. And we
25 are also uncertain sitting here just exactly when

1 districts are going to decide to do that.

2 The last opportunity that I would like to
3 talk about for local effects and effectiveness
4 monitoring is the subject of local population
5 monitoring. And basically I want to say that local
6 population monitoring provides an opportunity to
7 identify problems that may occur.

8 The collection and analysis of data
9 needed in the district for fish and wildlife programs
10 and, which was described generally in Panel 7, is the
11 type of information to which I am referring, and it
12 generally allows for some assessment of population
13 status.

14 I would like to make the point that few
15 local wildlife population concerns or fisheries
16 concerns have been attributed to timber management
17 operations to date as a result of using this
18 information. Generally the type of information
19 referred to here is collected again by our local
20 district staff.

21 And I would like to point out that there
22 is an opportunity in the population -- the provincial
23 population monitoring program referred to by Dr. Euler
24 for this particular mechanism to contribute or deliver
25 some specific information needs to that program in the

1 future.

2 With that, Mr. Chairman, Board, that ends
3 the presentation on the provincial effects and
4 effectiveness monitoring program for non-timber values.

5 MS. MURPHY: And the presentation on
6 Document 2.

7 Might I suggest we take five minutes,
8 we have to move a couple of people, and then commence
9 the evidence on Document 3.

10 THE CHAIRMAN: Well, I think we will take
11 a 15-minute break at this time and then come back.

12 MS. MURPHY: That's fine. Thank you.

13 THE CHAIRMAN: Thank you.

14 ---Recess taken at 11:15 a.m.

15 ---On resuming at 11:35 a.m.

16 THE CHAIRMAN: Thank you. Be seated,
17 please.

18 MS. BLASTORAH: Mr. Chairman, we are now
19 going to start into Document No. 3 and we're going to
20 begin with Mr. Gordon who, I understand, is going to
21 deal with timber effects and effectiveness or effects
22 and effectiveness with regard to timber values rather.

23 CONTINUED DIRECT EXAMINATION BY MS. BLASTORAH:

24 Q. Is that correct, Mr. Gordon?

25 MR. GORDON: A. Almost.

1 MS. BLASTORAH: And I would ask the
2 reporter to let us know if she is having any problem
3 hearing Mr. Gordon. We have set up a microphone but
4 I'm not sure how effective that setup is going to be.

5 MR. GORDON: First of all, if I could ask
6 the Board to turn to Document 933, page No. 2. And, as
7 you recall, that is where Dr. MacLean talked about
8 effects versus effectiveness monitoring.

9 The thesis of Document 3 relates to
10 effectiveness monitoring, and where we are coming from
11 there is, when you look at page No. 2 you will see down
12 at the bottom it says: Guidelines, Manuals Objectives,
13 and in timber management effectiveness monitoring we
14 are monitoring whether or not we are being effective in
15 meeting our objectives.

16 And my overheads are all in Document 935,
17 excepting one or two, and I will point out where they
18 came from when I get to them.

19 Looking at page No. 1 in Document 935,
20 I'm going back to the purpose of the undertaking to
21 provide a predictable continuous wood supply. While
22 obviously we are concerned about volume today, more
23 importantly we are concerned about volume tomorrow and
24 that's the most important thing to be monitoring when
25 you're doing timber management effectiveness

1 monitoring, that is the purpose of that monitoring.

2 MS. BLASTORAH: Mr. Gordon, perhaps I
3 could ask you to slow down just a little bit. Thank
4 you.

5 It's 935 we are looking at, Mr. Chairman.

6 THE CHAIRMAN: Right, I have it. Thank
7 you.

8 MS. BLASTORAH: And those pages are
9 numbered 1 to 8.

10 MR. GORDON: Looking at overhead No. 2 --

11 THE CHAIRMAN: Just a second, I lost my
12 pen. Thank you, sorry.

13 MR. GORDON: In Document No. 3 we divided
14 the levels of effectiveness monitoring into three
15 geographic levels, the lowest level being stand, and
16 that's in the tens of hectares; the middle level being
17 management unit, and that's in the one hundred
18 thousandths of hectares; and then the province, which
19 includes the one hundred management units.

20 I will be discussing the stand and
21 management unit level and Dr. Osborn will be talking
22 about the provincial level.

23 And obviously when you are looking at the
24 effects of timber management, the way we have set up
25 our planning process in Ontario and the most

1 appropriate geographic unit to look at the results of
2 timber management from a wood supply point of view is
3 at the management unit level, but to be able to do that
4 you have to aggregate the results of what is happening
5 at the stand level.

6 From a timber management effectiveness
7 point of view what you look at when you are at the
8 stand level. We have four activities and three of
9 them, I submit, that we can look at in detail at the
10 stand level and perhaps one of them, access activity,
11 does not make much sense to look at at the stand level.

12 MS. BLASTORAH: Q. Mr. Gordon, could you
13 just turn that just this way a bit so that the counsel
14 can see it as well. I think that ought to do.

15 MR. GORDON: A. And relative to access,
16 why is it then appropriate to look at it at the stand
17 level. First of all, we do our planning for primary
18 and secondary roads every five years and basically we
19 are looking at areas that include a number of stands.
20 And, for example, you may have a primary road that is
21 planned and that primary road may have a number of
22 secondary roads proceeding off that road, and the
23 secondary road may go through one block and access
24 another block at the other end, and each of those
25 blocks is made up of a number of stands and so,

1 therefore, it is just not practical to assess the
2 effectiveness of access at the stand level.

3 Q. Mr. Gordon, with regard to that, you
4 indicated that you plan the primary and secondary roads
5 at the five-year level. When you are planning primary
6 roads, what time frame are you looking at?

7 A. In the timber management planning
8 process you look ahead for 20 years, identifying
9 corridors, and you do detailed planning for primary
10 roads for the upcoming five years.

11 Q. And would that make it even more
12 difficult?

13 A. That's correct.

14 Q. Thank you.

15 THE CHAIRMAN: I don't think it is
16 necessary to put that sketch in; do you?

17 MS. BLASTORAH: No, I don't think so, Mr.
18 Chairman. It doesn't quite come up to the caliber of
19 some of the other artwork perhaps. No slight intended,
20 Mr. Gordon.

21 MR. GORDON: Dr. Osborn is good.

22 MS. BLASTORAH: I guess we'd call that
23 minimal a start.

24 THE CHAIRMAN: Certainly not enough to
25 have a signed one.

1 MR. GORDON: I will try harder next time.

2 If you recall, Mr. Cary talked about the
3 different times that we visit the harvest block and
4 sometimes you are there to look at specifically the
5 harvest activity carrying out an area inspection, and
6 relative to timber management effectiveness and looking
7 at the harvest activity, the two major things you would
8 look at are utilization levels and what I call site
9 integrity.

10 MS. BLASTORAH: Q. And when you say
11 'site integrity', Mr. Gordon, I believe we had some
12 interrogatories dealing with that?

13 MR. GORDON: A. That's correct.

14 MS. BLASTORAH: Mr. Chairman --

15 Q. I beg your pardon, go ahead.

16 MR. GORDON: A. We have Interrogatories
17 11 and 39 from Anglers & Hunters and 55 from Forests
18 for Tomorrow that deal with this subject area.

19 And when I talk about site integrity what
20 I am talking about is looking to see if there is any
21 site damage taking place and such things as rutting,
22 compaction, excessive bulldozing or local ponding
23 because of road construction.

24 I would like to make it clear, although I
25 have listed those four things and you are looking for

1 those in an area inspection, they don't commonly occur,
2 but we should be looking for them.

3 Relative to utilization levels, how does
4 that impact on timber management effectiveness. First
5 of all, there is the obvious one, getting wood to the
6 mill today and if you don't utilize the wood in the
7 forest properly, you are not getting as much wood from
8 that stand as you possibly could have.

9 Secondly, if merchantable fiber is left
10 on the site it can impact on future operations. So
11 that if you have a lot of fiber left on the site it may
12 make your upcoming site preparation project, for
13 example, inefficient and more costly and potentially
14 ineffective.

15 Relative to the renewal activity, I would
16 just like to highlight one area and that's the free to
17 grow assessment and tie it in with the maintenance
18 activity. What we have to recognize is at the stand
19 level the activities are usually happening in a
20 sequence and so when you go out to do an assessment of
21 the renewal activity and are doing a free to grow
22 assessment besides actually assessing the renewal
23 operation: Were you successful in bringing that stand
24 through to being free to grow, indirectly you may also
25 be assessing the effectiveness of a previous

1 maintenance operation and indirectly the effectiveness
2 of the harvest operation.

3 In MOE's statement of issue they asked us
4 a question as to whether or not we will be monitoring
5 these stands after they are free to grow, and
6 categorically the answer is yes.

7 I would just like to refer the Board back
8 to an overhead from Panel 4, and why do I say that. I
9 think it is very simple. What we have to recognize is
10 that free to grow assessment relative to the new stand
11 takes place five to 12 years approximately after
12 harvest, that stand will be in existence after free to
13 grow for another 50 to 80 years before potentially it
14 may be harvested or uses for another objective.

15 And, therefore, you may, for example,
16 have some infestation of insects entering onto the unit
17 and, therefore, you will have to monitor the stand
18 throughout the rotation.

19 Q. And, Mr. Gordon, would some of the
20 visits to the stand that Mr. Cary talked about when he
21 was addressing area inspections, would some of those
22 occur post-free to grow? I believe you put up his
23 diagram of the harvest block a few minutes ago.

24 A. Yes. If I could refer back to Mr.
25 Cary's overhead. There is no question that that will

1 be the case, although we have to recognize though at
2 this point time with timber management in Ontario the
3 focus, to a large degree, relative to the renewal of
4 stands has been visiting the stands from the time that
5 they are harvested until they are free to grow.

6 As more and more stands become free to
7 grow, because of our renewal efforts, we will have to
8 spend more and more of our time monitoring the stands
9 between the free to grow period and the time they are
10 next harvested.

11 MS. BLASTORAH: And, Mr. Chairman, just
12 for your notes, the overhead that Mr. Gordon referred
13 to from Panel 4 was a document contained in the
14 statement of evidence for Panel 4 which is Exhibit 135,
15 and that particular diagram is found at page 195.

16 THE CHAIRMAN: Thank you.

17 MR. GORDON: Moving on to page 4 of
18 Document 935. Relative to timber management, we set
19 objectives at management unit level and, therefore, it
20 is most appropriate that we assess the achievement or
21 how successful we are in meeting these objectives at
22 the management unit level.

23 This similar -- this figure is also in
24 the panel statement and the point I want to make here
25 is that we will be making an assessment of

1 effectiveness at the management unit level relative to
2 timber management objectives and our assessment of that
3 will be included in the new timber management plan and
4 the report of past forest operations.

5 We received an interrogatory from the
6 Ministry of the Environment, which is No. 4, and they
7 asked us relative to this topic if we would be
8 aggregating the results of our assessment of renewal
9 operations on a management unit basis, and the answer
10 definitely is yes, and we will be reporting on that
11 aggregation in the report of past forest operations.

12 Looking at the first point on page 5. As
13 per term and condition No. 8, we will be discussing our
14 conclusions on the success of meeting management
15 objectives for a given management unit in the report of
16 past forest operations; that is, besides comparing the
17 plan to the actual accomplishments, we will also be
18 interpreting what that means.

19 During our site visits, and sometimes
20 they may be through area inspections, more often they
21 will be through what we have called technical
22 inspections, we may identify some renewal and
23 maintenance problems and, if they are significant, we
24 will report on those in the report of past forest
25 operations for that management unit.

1 And specifically as per term and
2 condition No. 42, we will and are required to report
3 results of free to grow assessments and, as well, we
4 will - and it is tied in part with term and condition
5 42 - we will give an overview of the level of
6 silvicultural effectiveness that is taking place on
7 that management unit. And that's documented in term
8 and condition No. 43.

9 We received two interrogatories from
10 Forests for Tomorrow, a No. 35 and 16(c) and they were
11 basically asking us as to whether or not we will be
12 reporting on the results of the harvest activity, and
13 we will also, as a result of area inspections, in the
14 timber management plan and the report of past forest
15 operations summarizing any significant utilization
16 problems and any problems relative to site integrity.

17 Q. When you say 'site integrity', would
18 that relate back to the kinds of things you identified
19 a few minutes ago such as excessive bulldozing or local
20 ponding?

21 A. That's correct, it will also include
22 rutting and compaction.

23 So formally every five years the unit
24 forester relative to timber management is required to
25 stand back and look at how good a job is taking place.

1 And obviously there will be times where that will
2 happen and a problem will be identified that the local
3 manager cannot deal with and obviously that will
4 sometimes happen within the five-year planning period.
5 So what mechanisms are available to the local manager
6 to try to solve problems that are beyond his or her
7 capabilities.

8 And I will move on to overhead No. 6. In
9 part this relates to a question from MOE in their
10 statement of issue: How does the practising forester
11 get exposed to new knowledge, techniques.

12 In Ontario, we have a number of technical
13 development units and they have a very important role
14 that will continue to evolve and, as you can see in
15 this overhead, sometimes we do identify problems beyond
16 the ability or mandate of the local manager, whether it
17 be by a company person or an MNR person. There is the
18 option for that problem to be brought forward to the
19 applicable TDU and sometimes the TDU has an answer that
20 they give back to that local manager right away.

21 For example, the Thunder Bay TDU has an
22 extensive library and they have and will be doing
23 extensive literature reviews and, as well on computer,
24 they have what they call an old trial inventory of
25 2,500 projects that date back to 1950. So by doing

1 their lit view and looking at whatever results they
2 have available on computer, they sometimes can give
3 answers right back to the field.

4 And a simple example of that was a
5 question came in from a company relative to a poplar --
6 the need for a poplar cull survey; that is, when I talk
7 about culls, we're talking about the rot that's in the
8 middle of the tree. They wanted some information
9 relative to poplar and they wanted to relate the amount
10 of rot to the site conditions that they were dealing
11 with.

12 The TDU did an extensive literature
13 review, passed that information on to the company, and
14 as well the company felt that for their local condition
15 they needed more information, so the TDU designed a
16 sampling methodology.

17 Sometimes the TDU cannot find such an
18 easy solution and sometimes they will carry out a trial
19 on their own and pass the results of that trial back to
20 the field forester.

21 Sometimes the problems that will and are
22 coming to the TDUs are beyond their mandate and so,
23 therefore, they will pass the problem on to the
24 appropriate research body, whether it be the CFS - now
25 called Forestry Canada - the Ontario Forest Research

1 Institute, MNR's research arm, or the universities.
2 And sometimes, because of their access to information,
3 they have a ready solution and pass that back.

4 However, sometimes they also identify an
5 area which requires research and they develop a
6 solution. An example of that is a grass problem has
7 been identified on a specific site type and it appeared
8 like a very simple question, but it is beyond the
9 mandate of the TDU and the unit forester to come up
10 with the answer and critical to the solution of this
11 problem was knowing whether or not the grass problem
12 was due to the seeding of the grass or the growth of
13 the grass from rye zones underneath the ground.

14 So what the TDU in Thunder Bay is
15 planning to do is enter into an agreement with Lakehead
16 University to have them look at this problem.

17 Q. Mr. Gordon, what would the
18 significance of that distinction be, whether the grass
19 reproduced by seed or rye zones?

20 A. If you know which way the competition
21 problem is coming from that will affect the management
22 activities that you carry out, whether it be site
23 preparation or the use of a herbicide.

24 Q. Thank you.

25 A. For the Board's information, as

1 outlined in the panel statement, relative to research
2 carried out by these organizations, in Ontario we now
3 have the Ontario Forestry Council and under the Ontario
4 Forestry Council we have the Ontario Forest Research
5 Committee and one of their responsibilities is to
6 provide direction and set priorities for research.

7 And on the Ontario Forest Research
8 Committee all of the major forest research
9 organizations in the province are represented.

10 MS. BLASTORAH: Mr. Chairman, I would
11 just point out for the Board's information that the
12 terms of reference of those two organizations are set
13 out in the witness statement for this panel, Exhibit
14 915. The terms of reference for the Ontario Forestry
15 Council are contained at pages 605 and 606, and for the
16 Ontario Forest Research Council at page 608.

17 And, in addition, the Ontario Federation
18 of Anglers & Hunters asked an interrogatory, their No.
19 43, in response to which we provided the membership of
20 those two organizations and the entire minutes which
21 amounts to about an inch or an inch and a half of
22 paper, so we haven't provided that to the Board.

23 MR. GORDON: And for the Board's
24 information, it was the membership at the time that the
25 letter was sent out.

1 MS. BLASTORAH: Yes.

2 MR. GORDON: Going on to overhead No. 7.

3 The purpose of this overhead is just straight
4 information for the Board to advise you of what draft
5 terms and conditions tie into the idea of improving
6 effectiveness.

7 We have term and condition No. 48 which
8 relates to the development of improved decision-making
9 tools, such as through the use of computers; a
10 commitment in term and condition No. 51 to a
11 provincially coordinated growth and yield program which
12 could have an impact both on our management of the old
13 forest and of the new forest; our commitment in term
14 and condition No. 56 relative to operational audits
15 which historically have tended to emphasize compliance.
16 There will also be an increased emphasis on the
17 assessment of effectiveness and, as well, tied into
18 improving effectiveness is training and that's term and
19 condition No. 58.

20 Going on to overhead No. 8, I have got
21 some final messages. The management unit and not the
22 stand or the provincial level is definitely the most
23 appropriate place -- appropriate geographic unit to
24 determine timber management effectiveness. The unit
25 manager can only operate effectively and efficiently

1 within a framework that is designed to permit the
2 flexibility in dealing with local conditions and
3 problems, and I believe in Ontario we have that frame
4 work.

5 And again, tied into reporting on timber
6 management effectiveness, the Ministry of Natural
7 Resources clearly recognizes its responsibilities to
8 the public to provide meaningful information on the
9 state of the timber resource and the future of that
10 resource. However, we have to recognize that public
11 reporting function must not hinder the unit manager's
12 ability to manage the resource; there must be proper
13 balance.

14 MS. BLASTORAH: Mr. Chairman, I would
15 just like to ask Mr. Gordon one more question and it
16 relates to some evidence that was given during Panel
17 15.

18 I have provided you, Mr. Gordon, with
19 copies of three excerpts from Exhibit 911 which is a
20 green binder of materials filed by the Ministry of the
21 Environment.

22 And, Mr. Chairman, I have copies of those
23 particular tables that I can provide to the Board. I
24 think that will make it somewhat easier. I don't think
25 there is any need to mark them again, they are part of

1 an existing exhibit.

2 THE CHAIRMAN: Okay.

3 MS. BLASTORAH: (handed)

4 THE CHAIRMAN: Thank you.

5 MS. BLASTORAH: And, again, these are
6 pages 34, 35 and 36 from Exhibit 911 filed by the
7 Ministry of the Environment.

8 Q. Mr. Gordon, I provided you with these
9 tables which were presented to Panel 15 by Mr. Campbell
10 and I would like to refer you to a specific item which
11 is contained on each of those tables.

12 If you'll notice each of the tables
13 contains the words 'compliance monitoring program
14 including effectiveness'.

15 MR. GORDON: A. That's correct. I note
16 that and it's at the bottom on the first page.

17 Q. That's correct. And I would just
18 like to ask you to comment on whether you feel the
19 inclusion of those items is necessary and appropriate
20 with regard to these particular types of tables?

21 A. First of all, at this point in time
22 the commitment that MNR is making relative to outlining
23 a monitoring program for an area of concern, the
24 commitment we are making relates to compliance
25 monitoring. Secondly, if I could ask the Board to turn

1 to Document 933, page No. 5 --

2 Q. Mr. Gordon, just not to interrupt
3 you, but you said compliance monitoring program. Did
4 you mean compliance monitoring plan of the type that's
5 been outlined by other witnesses earlier in this panel?

6 A. That's correct.

7 Q. Thank you.

8 A. Yes, the term program is very
9 misleading.

10 Q. Thank you.

11 A. Looking at Document No. 933 at page
12 5, you will recall that Dr. MacLean talked about the
13 need for a provincial effects/effectiveness monitoring
14 program, the need being and recognizing that the
15 processes that are taking place out there at the local
16 level are sometimes very complex and to effectively
17 determine the reason for those effects you very often
18 need to have studies that have high scientific
19 standards.

20 And as well, after making that comment, I
21 would like to turn to page 29 in that same document and
22 this is the evidence of Mr. Straight, where Mr.
23 Straight was discussing area inspections. And if you
24 look at the subtitle 'situations', it was Mr.
25 Straight's opinion that we can make observations on

1 unanticipated problems or concerns.

2 If you recognize the complexity of
3 developing a proper effects/effectiveness monitoring
4 program and recognize that we will be making
5 observations, I think it is inappropriate to expect us
6 to include, for each area of concern, an effectiveness
7 monitoring program.

8 However, I want to make it clear that
9 when we were out there carrying out the compliance
10 monitoring program; that is, delivering on the plan
11 that we have outlined in the timber management plan for
12 a given area of concern, we will be documenting those
13 observations of unanticipated effects that are
14 considered significant.

15 And I just find it difficult to see how
16 you can plan to do that and document what the program
17 will be to do that.

18 Q. And, Mr. Gordon, would it be
19 misleading to call that type of recording observations
20 effectiveness monitoring as the type outlined by Dr.
21 MacLean?

22 A. Yes, it would.

23 Q. And one further question. You
24 indicated that you felt it would be inappropriate to do
25 that with regard to areas of concern. Would that also

1 apply with regard to normal operating areas and timber
2 values?

3 A. Yes, that's correct.

4 Q. Thank you. Did you have something
5 else to add?

6 A. There is a second page here and down
7 at the bottom of the second page of what you just
8 handed out to the Board it also has something called a
9 'compliance monitoring program including
10 effectiveness'.

11 First of all, relative to effectiveness,
12 the same comments would go and, as well, relative to a
13 compliance monitoring program, it is MNR's intent to
14 outline relative to access roads what we are proposing
15 for areas of concern and not for the total road.

16 And so, therefore, the component of an
17 access road that is an area of concern; i. e., a water
18 crossing, the compliance monitoring plan for that area
19 of concern will be documented in the area of concern
20 planning record, and that would be the equivalent of
21 the first page in this handout.

22 So, therefore, it is my submission that
23 the compliance monitoring program that's listed on the
24 second page is redundant and, as well, I would suggest
25 that the need for outlining a compliance monitoring

1 program on a form or a form similar to the third page
2 is also redundant because in almost every case a water
3 crossing is an area of concern and, therefore, we will
4 be outlining for that individual area of concern the
5 compliance monitoring plan.

6 That's all I have.

7 Q. Thank you. And, Dr. MacLean, I would
8 like to ask you a related question. It's a bit of a
9 stretch for that microphone.

10 Would you expect the compliance
11 monitoring plan for areas of concern to also provide a
12 plan for effects and effectiveness monitoring?

13 DR. MacLEAN: A. No, I think I would
14 agree totally --

15 Q. For non-timber values, I'm sorry?

16 A. For non-timber values. I would agree
17 totally with the comments that Mr. Gordon has made
18 about the effects and effectiveness monitoring and the
19 capability of local staff to develop and deliver such a
20 plan.

21 I think in the comments that I have made
22 about the problems in developing such a plan and the
23 comments that Mr. Straight has made about what we can
24 reasonably expect from a local monitoring program in
25 terms of information about effects and effectiveness,

1 we have covered the difficulty in developing and
2 carrying out such a plan, and I do think in this case
3 it would be inappropriate.

4 Q. Thank you. I would like now to move
5 on to the evidence of Dr. Osborn, if I could.

6 MS. BLASTORAH: Now, Mr. Chairman, I am a
7 bit in your hands with regard to the timing. I
8 anticipate Dr. Osborn's evidence will take somewhere
9 between 45 minutes and an hour and we are now at 12:15.

10 THE CHAIRMAN: Well, we undertook to
11 allow Ms. Murphy to complete her conference call at
12 1:10, I believe it was.

13 MS. BLASTORAH: Mr. Chairman, it might be
14 possible to complete Dr. Osborn's evidence by one
15 o'clock and perhaps we could break for lunch at that
16 time.

17 THE CHAIRMAN: All right. And I think we
18 should advise the parties that we are going to rise
19 today at three, and we have discussed it with counsel
20 for the Ministry and we may in fact finish the direct
21 on this panel by that point in time.

22 We are going to have an abbreviated lunch
23 hour. In the event that we don't for some reason, then
24 we will complete the remaining half hour to three
25 quarters of an hour the first day that we come back for

1 evidence, which will be Wednesday of next week.

2 MS. BLASTORAH: Mr. Chairman, I will have
3 a better projection at one o'clock, but I anticipate
4 that if we complete Dr. Osborn's evidence before the
5 lunch break, we shouldn't have any problem completing
6 the evidence in total today.

7 THE CHAIRMAN: Okay.

8 MS. CRONK: Just on that point, sir. I
9 wonder if I could obtain, for the benefit Mr. Cassidy
10 and myself, clarification as to whether you think it is
11 going to be finished by two o'clock, or are we on our
12 feet today, Mr. Chairman?

13 MS. BLASTORAH: No, I don't think that
14 would be possible.

15 THE CHAIRMAN: No, I think we will be
16 hard pressed to finish by three, it will be around
17 there.

18 MS. CRONK: That's what we assumed, but I
19 thought I had better confirm that.

20 THE CHAIRMAN: Okay.

21 MS. BLASTORAH: Mr. Chairman, Mr. Gordon
22 indicated in his final messages a recognition by the
23 Ministry of the appropriateness of their reporting back
24 to the public with regard to their mandate, and Dr.
25 Osborn is going to follow up on that and outline the

1 provincial annual report and the state of the forest
2 report which are mentioned in the terms and conditions.

3 Q. If I could ask you to do that now,
4 Dr. Osborn.

5 DR. OSBORN: A. The main purpose of
6 these two reports -- the main purpose is to --

7 MR. MARTEL: Can I have that number,
8 please?

9 DR. OSBORN: I beg your pardon, sir.

10 MS. BLASTORAH: This is Exhibit 934.

11 DR. OSBORN: 934.

12 MS. BLASTORAH: If you will recall, that
13 was the exhibit we have some confusion retaining a
14 number for yesterday. I beg your pardon, I thought
15 they had been distributed.

16 ---Discussion off the record

17 MS. BLASTORAH: I seem to have a mental
18 block about this package of overheads.

19 (handed)

20 THE CHAIRMAN: Thank you.

21 DR. OSBORN: In Exhibit 934, the first
22 page speaks to the two provincial reports in very
23 general terms, and the main message essentially of both
24 reports are primarily geared to help from a provincial
25 point of view an understanding of what is happening on

1 an annual basis and a longer term frame to the
2 provincial forest resource.

3 The annual report is primarily a focus on
4 what happened that year; no more, no less, a statement
5 of what happened. This in itself will provide data for
6 trends because, in all honesty, as much as Mr. Gordon
7 has said, much of what the forest effectiveness is
8 about is the ability to see how well we are doing,
9 vis-a-vis we are not only putting wood in the door
10 today but in the door tomorrow. What we do today is
11 very much influenced and arranged around what we are
12 trying to do tomorrow.

13 The third main part of the annual report
14 is to try and to provide information about what is
15 happening in a form and format that is as
16 understandable as possible to help people be able to
17 make a knowledgeable assessment of what is happening.

18 So this is really nothing new, this is a
19 repackaging of existing type of information and the
20 real crux of its success will be in its ability to
21 describe to the reader what in fact is happening.

22 MRS. KOVEN: And the audience is the
23 general public, Dr. Osborn?

24 DR. OSBORN: Yes, the general public,
25 Mrs. Koven. And for that reason particularly, and you

1 have seen before Exhibit 394 which is a Ministry
2 statistics package - this has been shown to you before
3 as Exhibit 394 - and this is a bunch of numbers.

4 It does in essence describe on an annual
5 basis what was done, but to try and understand what
6 those numbers mean, even to try and visualize what
7 those numbers are about is sometimes difficult for
8 non-technical readers.

9 And so to that extent the format that is
10 proposed in both the annual and the state of the forest
11 report includes not just the numbers, because they must
12 be there, but pictorially trying to describe those.

13 And, again, you have seen before Exhibit
14 56 which is the Forest Resources of Ontario, 1986.
15 This exhibit contains numbers but also diagrams, maps,
16 pie charts and words that try and elucidate what those
17 numbers mean, where did they come from.

18 The only other addition would be, in the
19 format really of those two reports, the annual and
20 state of the forest, would literally be pictures to try
21 and convey what some of these things look like.

22 In the five-year state of the forest
23 report, the emphasis there really is the analysis and
24 the implications. On an annual basis these things have
25 happened; on a five-year basis these additional things

1 have happened, what does it mean. And it's far more
2 relevant in forestry because of the time horizons to
3 analyse based on a series of numbers rather than any
4 one particular year, particularly in terms of
5 effectiveness, effectiveness in our ability to supply
6 wood today and tomorrow.

7 So to that extent the five-year report
8 will concentrate very, very much on analysing what has
9 happened and reprojecting, therefore, what might.

10 THE CHAIRMAN: I take it, Dr. Osborn,
11 there is no way that you can effectively integrate the
12 five-year report with plans across the province because
13 they are staggered all over the place; is that correct?

14 DR. OSBORN: I will come to that dilemma,
15 sir, a bit little later on. We have two alternatives
16 to table.

17 THE CHAIRMAN: We shall wait.

18 MS. BLASTORAH: Q. And just for
19 clarification, Dr. Osborn, you have indicated on that
20 last overhead you've shown a five-year report and you
21 did mention, but just for clarification, that is the
22 state of the forest report that's referred to in term
23 and condition, I believe it's No. 55?

24 DR. OSBORN: A. Yes, it's 55. Within
25 MNR we have tended to already take for granted this is

1 going to be a five-year type of document, and it is the
2 statement of the forest report that I'm alluding to.

3 Just before I leave that, one sort of
4 final comment, almost in terms of words you can think
5 of the annual report very, very much as an efficiency
6 type of document, and to view the sort of efficiency:
7 Are you doing things right? We will come to why
8 perhaps that is appropriate when we look at the
9 contents.

10 The five-year extent of the forest report
11 is much more: Are you doing the right thing? Which is
12 usually associated with the word effective.

13 Q. In a similar vein, Dr. Osborn - I'm
14 sorry, I don't think it's necessary to put the overhead
15 back up - there is a potential for confusion because of
16 the title of the first report, the annual report and
17 the annual report contained in the timber management
18 plan.

19 I would just like to clarify. The annual
20 report you are talking about in your evidence here is
21 that referred to in term and condition No. 54 which is
22 the provincial annual report?

23 A. Yes. As the heading of that
24 particular report showed, it is the provincial annual
25 report to which I am now speaking and both these two

1 reports to which I am speaking are on a provincial
2 basis.

3 Page 2 in 934 really is an echo of what
4 in fact is in the evidence itself, and I just want to
5 very briefly go through typically what is in each of
6 these headings, give you some illusion as to what is in
7 there and from where it might come.

8 And the first one, the description of
9 Ontario forests in timber management, essentially is a
10 set of words, maps, pictures to help the reader
11 understand what and where are Ontario forests, what
12 they look like, and what activities are in timber
13 management. In essence, a synopsis of the last 18
14 months in this hearing.

15 With difficulty, Mr. Martel. Yes, with
16 difficulty, yes.

17 THE CHAIRMAN: And you are going to get
18 it into how many pages?

19 DR. OSBORN: Undecided as yet, sir.

20 MS. BLASTORAH: Well, Mr. Chairman, they
21 do say one picture is worth a thousand words, so we are
22 going to have a lot of pictures.

23 THE CHAIRMAN: One picture in this
24 hearing is worth twenty thousand words at least.

25 DR. OSBORN: The second part speaks to

1 essentially what is out there, the description of the
2 land and the forest base; analogous, if you like, to
3 what you have heard vis-a-vis the forest resource
4 inventory.

5 The third part dealing with what happened
6 this year vis-a-vis harvest and forest industry
7 statistics, remembering this is the annual report, what
8 actually happened; how much was cut, what was cut,
9 where was it cut, what kinds of trees, volumes of
10 trees. The Ministry has an information system in
11 existence that provides those sorts of data on an
12 annual provincial basis.

13 The fourth item is the forest management
14 activities; what has happened vis-a-vis the four
15 components of the EA process and additional pieces
16 maybe over and above that.

17 Atypically the data that are in the
18 timber management plan as Table 6.4.1 and 6.4.2, 6.7.1,
19 6.7.2, those sorts of data that are in the management
20 plan and you've seen those sorts of tables in Panel 15,
21 those sorts of values aggregated for the province.

22 But in addition in Item 4, again to help
23 understand what does this mean provincially, a way of
24 showing it perhaps would be a map of the province by
25 management unit where each management unit is coloured

1 or highlighted as to whether a little or a lot was
2 done. Where is the action taking place, again, trying
3 to give a provincial perspective of this information.

4 MS. BLASTORAH: Q. Dr. Osborn, just for
5 clarification, you said the management units will be
6 highlighted as to whether a little or a lot was done,
7 do you mean on a single management unit basis or that
8 would be done within each management unit?

9 DR. OSBORN: A. You have a map of the
10 province and the map of the province would be broken
11 into -- one map of the province, one page, one map of
12 the province showing each and every management unit.

13 Each and every management unit could be
14 coloured with the magnitude of whether a little or a
15 lot were done.

16 The same with the cutting, a little or a
17 lot and you can compare the colors: Am I doing a lot
18 regen where I'm doing a lot of cutting. These sorts of
19 pictures is a way of expressing this, trying to grasp
20 the province as a whole and we hope the reader
21 understands what is happening where.

22 Q. Thank you.

23 A. Except Item 4 in this diagram, these
24 forest management activities, you will need to step
25 sideways because of the interest, enthusiasm,

1 excitement and misunderstanding as to what the
2 silvicultural information system is about.

3 So I am going to step sideways out of
4 this document and describe now, because it relates to
5 this particular piece, what the silvicultural
6 information system is, and I must admit in more detail
7 than I originally was envisaging before the enthusiasm
8 abounds.

9 And I say I was somewhat surprised
10 because there was earlier evidence, I believe in Panel
11 8, Mr. Waito --

12 Q. Panel 11.

13 A. Panel 11 from Mr. Waito who I thought
14 quite succinctly described what it was. However, the
15 silvicultural information system really has three major
16 components. This diagram alludes to the three.

17 First of all, there is a description of
18 the site; the second -- the second major piece of it or
19 the piece of which I will spend some detail is a record
20 of what happened, a record of silvicultural events, a
21 record of action; hectares planted, areas tended, and I
22 will speak about that as the SIS component.

23 The third part of it on this Exhibit 3 is
24 the results of the silvicultural event which is the
25 SAS, or S-A-S component, silvicultural assessment

1 system.

2 Now, to try and perhaps clear up some
3 misunderstanding as to what this system is all about,
4 who is it for, it really essentially records events and
5 actions. It is history; it is a repository of history.
6 It provides those results essentially for management
7 control and I am right back to the introductory diagram
8 in the beginning of Panel 16. What have I done where
9 and what happened.

10 SAS will end up providing data for trends
11 and we'll revisit that in five or 10 minutes' time as
12 to what do I mean, particularly how well am I doing
13 over time, am I getting better, and the system was
14 essentially designed for the field forester. That was
15 the key, in fact the prime audience. And the system in
16 a computer sense is literally designed that way to
17 facilitate that user.

18 The overall emphasis apart from who and
19 what was it for was to provide an input into the
20 reports that have been explained in the timber
21 management plan at the management unit level.

22 So SIS was designed, developed and
23 software that lets you produce those standard reports
24 as in 6.4.1., 6.4.2, 6.7.1, 6.7.2 in the timber
25 management plan.

1 Now, the key to the understanding is:
2 What does it not do? It does not inherently analyse
3 why something worked or didn't work. The data lend
4 themselves to that form of analysis, but the system per
5 se does not do the analysis for you.

6 There was certainly some interest, an
7 interest exhibited - shown by the Board as to where is
8 it at in terms of status. The SIS component, the
9 record of what I have done component, happens to be on
10 an interactive microcomputer system, and why bother
11 with techy terms.

12 Interactive, yes, you can speak to it and
13 it will talk to you quickly, as opposed to what I will
14 get down to in a moment called main frame. You can ask
15 it questions, it will give you back the answer almost
16 instantaneously. It's a big almost microcomputer
17 particular because it happens to be a relatively small
18 machine and will exist in SIS, it does currently
19 involve MNR district offices.

20 At this point in time, all of MNR's field
21 staff likely to use this have been trained through a
22 series of courses. Those training courses have
23 included many forest industry staff and, at this point
24 in time, the test version is existing and in operation
25 in all MNR districts this year.

1 THE CHAIRMAN: To your knowledge, is this
2 system also utilized by the major companies; like, do
3 they have terminals and are they hooked up to the same
4 system in their programs?

5 DR. OSBORN: No, not everybody and I will
6 come to that in about two slides later -- maybe three
7 slides later, I will explain why and why not, because
8 that was of interest to several people.

9 The SAS component, the assessments
10 component, the results component, stocking and free to
11 grow data component part at the moment is running on a
12 large machine, main frame, in what's called a batch
13 environment, which means you put the data in, day one
14 or maybe ten days later you get it back out again, as
15 opposed to interactive. Literally there is a slower
16 turnaround, you cannot talk to it, that is the
17 difference between these two in this particular
18 application.

19 The data happens to be processed in
20 Toronto because that's where the computer sits, the
21 field submit the tally sheets of what have I done, of
22 the results I've found, and subsequently the field
23 receive the results, computerized.

24 One of the initial criticisms was to
25 assume the SIS component was done this way, well, that

1 wasn't satisfying the main user, the forester. That is
2 where the SAS component still sits at this point in
3 time however.

4 A new design is under review and the idea
5 in the next 18 months to two years that will be moved
6 out and become part of interactive micro deal for the
7 field forester in the districts so that he or she has
8 access to not only what I have done but what's
9 happened. It isn't there yet.

10 MS. BLASTORAH: Q. And when completed,
11 that SAS element would then be interactive in the way
12 you described with regard to the SIS component?

13 DR. OSBORN: A. Very much so, and I will
14 illustrate in about five or 10 minutes' time exactly
15 the sort of questions that are being posed and answered
16 with both those two things being available.

17 To try and give a little bit of a flavour
18 as to what is in SIS, and again the substantive
19 questions that have cropped up in the course of the
20 whole hearing, right back even to Panel 4 I can
21 remember.

22 I have broken this into three main
23 pieces, the first part really says: Give me a
24 description of the area and a location; where am I and
25 what am I like where I am, and the ability to

1 cross-reference. In Panel 16 and probably other panels
2 you have heard us talk of the sequencing, the fact that
3 forest operations happen year 1, year 2, year 3, year 4
4 in the same piece of real estate. You can
5 cross-reference this.

6 Unfortunately it's not as simple and
7 clean as in year 1 you paint your house, in year 2 you
8 paint your house, and your house is a nice fixed
9 inviolate unchangable object. Forestry unfortunately
10 it is not quite that clear, we have to cross-reference
11 somehow.

12 The main components of SIS then are
13 listed below. Items 3 to 9, it covers the items which
14 have been long talked in the silvicultural activities.
15 It includes not only the silvicultural part including
16 Item 8 of the protection part, but even Item 9 which is
17 the harvest part of the depletions, alludes to fire,
18 insect loss.

19 So although it is called silvicultural
20 information system it has got within it some pieces not
21 directly silviculture.

22 And last, at this point in time in the
23 existing SIS component there is provision to enter,
24 record and, therefore, use the results of stocking
25 assessments and free to grow.

1 Q. Dr. Osborn, just before you leave
2 that overhead. You indicated that locating or
3 describing the area involved in silvicultural
4 operations is not as simple as it is when you are
5 talking about painting your house over and over again,
6 which is a status quo, if you will, or a stable
7 environment that you are talking about.

8 Could you give an example or an
9 indication of what sort of thing you are talking about
10 when you say it's not that simple?

11 A. Do you have the diagram of the... I
12 didn't include that. If I can come back to the diagram
13 Mr. Cary first showed of what happened on a particular
14 cut block over a series of years while counsel chases
15 the reference.

16 On this area we went in and maybe year 1
17 we did some site preparation and we may well have site
18 prepared the entire area cut, we may well have site
19 prepared literally up to the boundary of the adjacent
20 standing trees. Nice, clean, straightforward, the
21 whole area covered.

22 We then went in and we did some planting
23 on this area but we may in fact, because the southern
24 little 10 hectares, 15 hectares had natural regen
25 already come through that was acceptable to us, we may

1 have only planted nine tenths of the area. All of a
2 sudden it's no longer the whole house that has been
3 painted.

4 We then go through, we trend and because
5 of what has happened in terms of site development,
6 shrub development, we only needed to treat in a tending
7 sense that northwestern half of the block, 50 hectares
8 out of a hundred.

9 This so far as a cross-referencing has
10 been nice and easy because we've got the same fixed
11 outside boundary. But what happens if our tending
12 operation, which may or may not have been areal,
13 covered not only here but the adjacent one and the
14 adjacent one as one project.

15 The area we have now treated includes not
16 only this area but the adjacent areas, we have a
17 cross-referencing dilemma. You cannot easily record
18 exactly what happened to this boundary and this
19 boundary only. We are working on it, as you will see
20 in a moment, part of the province is working towards
21 trying to retain a boundary like the house that we are
22 painting.

23 Unfortunately, in forestry at the moment,
24 as is true of all other countries with natural forests,
25 the existing stands are happenstance of history and

1 circumstance, they are not necessarily a boundary for
2 management for the future. The stand boundary, the cut
3 boundary is not necessarily a fixture from the natural
4 forest; whereas, once you've got the forest organized,
5 foresters have a term for a finite piece of land that
6 they can keep track of called a compartment. Southern
7 Ontario has that.

8 That movement, as we gradually develop
9 the forest, will move over to the whole of northern
10 Ontario. Until that happens, cross-referencing is a
11 fact of life.

12 I am not sure if I helped or hindered.

13 Q. No, thank you, I think that was
14 helpful to have a picture of what you were talking
15 about.

16 A. The silvicultural information system
17 does contain, has the provision for recording an
18 incredible range of information about the site, about
19 what you've done, and that range of fields to enter has
20 been broken in the silvicultural information system
21 into two halves; those which are mandatory, you the
22 user must fill in this blank, and those which are
23 called optional.

24 And the split between mandatory and
25 optional has been a bone of contention with virtually

1 every single forester and everybody else since day one.

2 The current split has been based upon a
3 whole range of people in steering committees, project
4 team committees who are made up of staff within MNR,
5 within forest industry and the whole of the design of
6 this project went to outside agencies, primarily
7 forestry outside agencies.

8 The current list of mandatory items is
9 that shown on Diagram 6 of Exhibit 934. The first
10 seven primarily deal with: Where am I. It's an
11 address. Foresters use fancy words, but all it means
12 is where is the address.

13 Beneath that we have: When did it
14 happen, what kind of -- we have what kind of action
15 took place, whether it was on a cut-over, whether it
16 was on an NSR, that is what project type alludes to.

17 You heard in this panel the need to track
18 what happened on cut-overs as well as NSR, particularly
19 for FMAs.

20 The field. Under desired working group
21 or forest unit, the forester has to state the intent of
22 what he or she is trying to produce.

23 Program auspices really tries to carve
24 up: Did it happen on Crown land, on an FMA, on a piece
25 of private land with a Rivers Improvement Act

1 agreement. That is what auspices relates to.

2 The location code relates to the
3 Ministry's management information system. It is really
4 a geography, it's my cost centre in real terms;
5 typically district, maybe management unit.

6 County is straightforward. The source of
7 funds is literally whose money is it. Project area is
8 straightforward. Number of trees is straightforward.
9 They are mandatory.

10 For some activities, and this is page No.
11 7 of Exhibit 934 - and again you have heard about this
12 information before - for applying herbicides there is
13 some additional mandatory fields. The words are
14 self-explanatory, I don't intend to read them.

15 Page 9, the silvicultural information
16 system does contain some somewhat limited data about
17 the depletion aspect, it wasn't designed to cover that
18 but it has got that partly tagged along. So it will
19 keep track of on a map sheet basis what was depleted,
20 what working groups, but this - I make this
21 distinction - this information on the depletion is not
22 at the stand level.

23 The lowest form of aggregation of this is
24 typically the map sheet; it can be at the stand level
25 but not necessarily always. And this provides a

1 potential problem at the moment in the existing
2 system - to track a question Mr. Martel has asked in
3 the past - what was I, what have I become? And without
4 the map at the moment this system does not easily
5 answer that question. And I know it is a question,
6 sir, you've asked before.

7 Q. Just a point of correction, Dr.
8 Osborn. I believe that last one was page 8.

9 A. Yes, I'm sorry, it was page 8 to do
10 with depletions, yes.

11 Very briefly, I mentioned that the system
12 can contain stocking and free to grow assessments, for
13 that there are some mandatory fields. Again, words are
14 straightforward, I have no need to explain what they
15 say.

16 If we go to page 10, and this is really
17 all going to lead up to what is mandatory versus what
18 is optional, and I have not given the entire optional
19 list which is very, very lengthy.

20 Just to step aside for a moment, the
21 question: Why don't we keep all the optionals, surely
22 they can help us understand what is happening.
23 Remember the purpose was not why. In the past we and
24 other agencies have tried to keep track of everything
25 on every silvicultural project.

1 Two problems. The first problem is
2 having skilled staff to measure all these sorts of
3 things on every project and we can get into: How do we
4 measure the depths of the prominent mottles. We can
5 get into some other pieces in there. There is a
6 technological problem, much as was explained in
7 wildlife and fisheries habitat monitoring, you do not
8 expect to do that level of detail at every single
9 bottom piece of the story, the stand. It's just that
10 we found from practice it does not easily work.

11 The second is you can collect all these
12 but we are still not sure exactly which ones make
13 sense. In the eyes of the foresters, much as in the
14 eyes, as we've pointed out, in fisheries and wildlife
15 it makes more sense to try and ascertain cause and
16 effect relationships in a scientific experiment, not a
17 casual sample.

18 Now, that is not to say some of these
19 data cannot be and are not recorded and will give
20 inferences, but they not not necessarily categorically
21 explain cause and effect.

22 Q. Dr. Osborn, if the Ministry had the
23 manpower to collect all of this information to fulfill
24 all of these optional items or to record the
25 information with regard to those all the time, quite

1 apart from any cost of doing that or any staffing
2 problems, do you have see any other problems in doing
3 that?

4 A. Yes, very much so and it's
5 analytical. First of all, that's a casual sample.
6 Even if it was a carefully laid out sample, it
7 identifies what have I found versus what the results
8 were; a casual, not necessarily proper, correlation
9 could be shown.

10 You might find - surprise, surprise - all
11 the trees grew very, very well in the years when - I
12 was going to say the Blue Jays won - on some completely
13 unrelated correlatable factor. You would get
14 correlations; you can gather all sorts of weird things
15 and correlate quite highly, quite by chance.

16 THE CHAIRMAN: Using that basis then, you
17 are not going to get very good results; are you?

18 DR. OSBORN: Using my Blue Jays, sir, no,
19 perhaps not. Be that as it may, you'll get these
20 casual correlations. The only way to find out genuine
21 cause and effect is a proper, bona fide, scientifically
22 designed experiment for cause and effect.

23 MS. BLASTORAH: Q. And would that make
24 the job of manipulating and analysing the data that you
25 do have more difficult?

1 DR. OSBORN: A. If cause and effect was
2 found out?

3 Q. No, I beg your pardon, if all of that
4 information were collected routinely and recorded?

5 A. Yes. If the volume of the data of
6 all the optional fields were filled, we may or may not
7 have to make it, not a microcomputer in the district,
8 but a bigger machine. There is a data storage
9 difficulty.

10 Page 11 I have made -- which deals with
11 cross-referencing, I have made some previous allusion,
12 some illustrative example of the sequencing problem.
13 There is a treatment cross-reference file that tries to
14 help this tracking: What have I done over time, trying
15 to answer: If I stand here in the forest, tell me what
16 happened over the last 3, 4, 5, 6 years to help me
17 understand why I look like I look today.

18 The system aids that, but it sure isn't
19 perfect and it does need maps to clearly indicate the
20 results of what happened on this piece of real estate
21 over time.

22 Q. And those maps are currently produced
23 in conjunction with the system?

24 A. They are and they would have been an
25 example very similar to what I showed with the map from

1 Mr. Cary's evidence of how, over time on any one area
2 the actual area cut tended -- will vary.

3 The map -- if I go back to Mr. Cary's
4 map, if I literally stand at the end of the road head
5 and want to know: Why do I look like I look, what has
6 happened here, I would need the map to show that: Yes,
7 I was part of the tending; or if I stood here: No, I
8 wasn't. All the record will tell me is 80 out of 120
9 hectares have been so treated. I don't know where.
10 The map is an auxiliary part of the answer.

11 Q. And are you aware of whether those
12 sorts of maps are available to the public?

13 A. Given they sit at the district office
14 and to the extent, therefore, data in the district
15 office is available to the public, as far as I
16 understand, the answer is yes.

17 Q. Mr. Gordon, could you confirm that?

18 MR. GORDON: A. Yes, they are available.

19 Q. Thank you.

20 DR. OSBORN: A. Page 12 speaks to a
21 criticism actually of the way MNR and the forest
22 resources group is keeping track of things,
23 particularly with regards -- and that influences the
24 SIS design.

25 As I mentioned earlier, SIS was set up

1 primarily trying to help the field forester but
2 primarily to feed and the reporting function of SIS to
3 feed the timber management plan tables. This was one
4 of the main key pieces of SIS design, make sure the
5 data were in properly and when to feed those tables.

6 There was a second piece, and that was to
7 ensure consistency in feeding the management
8 information system of the Ministry. The management
9 information system of the Ministry deals with not only
10 what did you do, but what did you spend.

11 Page 13 takes the relatively simple set
12 of boxes of page 12 and tries to describe in real life
13 terms what actually is going on. Same core centre of
14 the silvicultural information system's achievements
15 feeding into timber management planning and the SIS
16 system feeding it's achievements into the management
17 information system. Same core to the same diagram,
18 this diagram.

19 Q. This diagram being page 13 of the
20 Exhibit 934?

21 A. Being page 13. There were some
22 questions asked in interrogatories as to: Does SIS
23 contain volumes, as an example and the the answer is,
24 no. SIS per se does not contain volumes. It contains
25 that, yes, so many hectares were cut. But the volume

1 data for that comes from an auxiliary system, another
2 system - the Ministry has several information systems -
3 called the timber scaling and billing system and it
4 ends up in the timber management planning tables, as
5 you see, but it doesn't go through SIS.

6 MS. BLASTORAH: And, Mr. Chairman, the
7 question in relation to that was Forests for Tomorrow
8 Interrogatory No. 46.

9 Q. Do you feel that's appropriate, Dr.
10 Osborn, for the volume information to be contained
11 separately in the timber scaling and billing?

12 DR. OSBORN: A. And the simple quick
13 answer is yes, and just to explain why. In information
14 management, in fact the Ministry has had for the last
15 18 months a very expensive information study: What
16 information do we need and how to structure it, and
17 without getting awfully technical, there will be, as
18 there are now, several databases and the key in the
19 arrangement of those data is to structure them in such
20 a way that any user can pick from whichever database
21 the data are in, it's not: Let's put everything in one
22 big bag so we can get everything out; it's: Let's
23 store it in the most appropriate way and ensure that
24 any user can get what they need, wherever those data
25 are, whichever database they are in. Hence, the answer

1 is no, it doesn't all have to be in SIS. Thank you
2 very much.

3 To have everything in one box is
4 technologies of the 60s, 70s.

5 Page 14 of Exhibit 934 reinforces that
6 the idea of the mandatory fields were to go through
7 standardized reports to go to the timber management
8 plan tables and the aggregate of those tables will end
9 up as part of the annual plan, which is my link back to
10 where I started 20 minutes ago.

11 At the same time, for the unit forester
12 using the mandatory fields and whatever of the optional
13 fields are available in the database available to him
14 or her, he or she can ask ad hoc questions and have the
15 answer.

16 When it says 'free form', it means the
17 user has to specify how they want the answers to come
18 out, what rows, what columns - it is free, it is not
19 fixed - answers to: Where am I at in terms of status,
20 what is happening over time in terms of trends, better
21 or worse, and sequencing, what has happened here, here,
22 and here over time.

23 THE CHAIRMAN: Dr. Osborn, why wouldn't
24 there be a link back to the timber management plan
25 tables for a particular plan where you have the

1 optional information regarding that timber management
2 planning area?

3 In other words, why couldn't there be an
4 arrow going from the box on the right at the bottom,
5 'free form', back over to the timber management plan
6 tables?

7 DR. OSBORN: There could be, but just as
8 easily I could explain that any of those queries asked
9 and answered as a table, as a question and answer,
10 could be a page that went into the management plan.

11 That's really what I am hearing you ask.

12 THE CHAIRMAN: Yes.

13 DR. OSBORN: And I would see that if the
14 questions were asked they would in turn could be filed
15 with the timber management plan. Now, depending on the
16 question as to how important that was, no reason why,
17 not at all, sir.

18 MS. BLASTORAH: Q. And, Dr. Osborn, just
19 following up from that, would it necessarily be the
20 case always that the sort of ad hoc inquiries made by
21 the unit forester would, in all cases, relate to
22 specific items covered by tables in the timber
23 management plan?

24 DR. OSBORN: A. No, not necessarily and
25 perhaps examples of what the ad hoc queries might look

1 like will perhaps explain why I say, no, not exactly.

2 And so on page 15 --

3 Q. Dr. Osborn, I had one other point of
4 clarification before you take that one off. I think it
5 was just a slip of the tongue, but at the bottom of the
6 left-hand column there when you referred to the
7 aggregation of the mandatory fields information, you
8 indicated that that would be aggregated in the annual
9 plan; did you mean to indicate the provincial annual
10 report?

11 A. Yes. Fair comment. I meant the
12 annual report, that which I was speaking of for 20
13 minutes now.

14 Q. Thank you.

15 A. We have chosen some particularly
16 complicated ad hoc queries and I was rather deliberate
17 in doing this just to make sure the system could cope
18 with what are very real questions, albeit complicated.

19 So the first one asked to literally list
20 the areas of bare root black spruce. Black spruce will
21 be in the system, bareroot will be in the system.

22 Upland sites, an optional field and in
23 fact the way SIS is designed perhaps a translation from
24 the questioner: What do you mean by upland, because
25 the site classification scheme doesn't have

1 upland/lowland - so the user has to think when they ask
2 the question how to translate that into what's in SIS -
3 and show me over the last three years what has happened
4 in terms of survival. A fairly straightforward
5 question: Am I getting better, am I getting worse in
6 terms of bare root survival on upland sites. What's
7 the trend.

8 The second one speaks to whether or not
9 I'm getting better or worse vis-a-vis the time to reach
10 free to grow. Over a 10-year period in jack pine in
11 seeding is it literally getting better, am I getting
12 free to grow faster, and is tending having anything to
13 do with it?

14 Now, the volume of data to answer that
15 sort of question is going to get quite voluminous. And
16 even when you get the answer that shows, yeah, all the
17 time, if you tend more surprise, surprise, the trees
18 get free to grow faster.

19 An inference, the sort of inference you
20 take back to the TDU and say: Hey, I could do with a
21 real bona fide experiment and one site has shown me:
22 Tend once, tend twice, tend three times, is there a
23 difference scientifically between those three.

24 It gives rise to the trend, the analysis
25 of these will give rise to the design of proper

1 experiments in the TDU.

2 The last question I might even leave to
3 the Board to read through and think out, trying to work
4 out whether in fact the areas of free to grow and the
5 time it takes to reach free to grow is really improved
6 under any of those sets of circumstances.

7 And this last question really had the
8 system look at what has happened year by year on a
9 piece of real estate, that cross-referencing system
10 really has to be brought into play in this one.

11 Now, these are examples of sort of ad hoc
12 inquiries getting quite complicated.

13 In answer to your earlier question, Mr.
14 Chairman, there's no reason why those questions and the
15 answer cannot surface on a periodic basis within the
16 plan, none whatsoever.

17 Q. And, Mr. Gordon, if that sort of
18 information were done, that sort of trend analysis,
19 where would you expect to see the results of that kind
20 of trend analysis in the timber management plan?

21 MR. GORDON: A. You would see that in
22 the report of past forest operations and it would tie
23 in with our commitment to report on silvicultural
24 effectiveness and things like that.

25 Q. Thank you.

1 THE CHAIRMAN: It is now one o'clock. Do
2 you want to break at this time for Ms. Murphy's --

3 MS. BLASTORAH: Mr. Chairman, we have two
4 more short overheads - I don't think it will take very
5 long - and that will finish this part of the evidence
6 and then I think -- I believe it's one or two?

7 DR. OSBORN: I have two more to do with
8 SIS.

9 MS. BLASTORAH: Yes.

10 DR. OSBORN: And then I walk into the
11 experiment.

12 MS. BLASTORAH: That's right, and that
13 would be a convenient point to break. I believe it is
14 only a few minutes' evidence.

15 Q. And, Dr. Osborn, I believe this
16 section of the evidence arises in relation to or in
17 answer to a concern raised by Forests for Tomorrow and
18 by the Chairman this morning in relation to the link
19 between systems used by the FMA holders and the
20 Ministry's SIS information system?

21 DR. OSBORN: A. Correct. The question
22 in essence was: Do FMAs use it; if not, why not type
23 of deal.

24 A recent survey seven or eight weeks ago
25 of FMA holders to that question: Will you use it, do

1 you use it, gave the results shown: 7 out of the 30
2 FMAs - sorry, we've only got 17 - 7 of them inferred,
3 yes, they would use it as is, some 16 said no, and some
4 7 said maybe.

5 Now, perhaps an explanation as to why.
6 The FMA program evolved in 1980, there was a
7 considerable amount of discussion between Crown and
8 company. At that time the existing SIS system was
9 quite convoluted, quite complicated and even within MNR
10 people were not happy which gave rise to its
11 redevelopment.

12 Companies for the most part said: Hey,
13 get your act together and they worked with us in trying
14 to get the act together and the companies worked with
15 the redesign.

16 In the meantime, companies had their own
17 computer environments corporately, they had their own
18 software developments and, in some cases, their own
19 existing systems to take care of silviculture.

20 And so we now have a situation where
21 several companies had existing computerized
22 silviculture recording systems, the hardware/software
23 environment that suits the company and that is not
24 necessarily the hardware/software environment that SIS
25 is in.

1 Q. And in some cases, Dr. Osborn, would
2 the software and hardware used by an individual company
3 be used for purposes other than silvicultural
4 information recording?

5 A. It would have been a corporate
6 company decision as to what hardware/software they
7 wanted from a company point of view, or the woodlands
8 point of view; but it was not necessarily the same
9 hardware/software environment that MNR has SIS in.

10 THE CHAIRMAN: But is it not just a
11 matter of putting a unit, a small desktop microcomputer
12 unit that is compatible with MNR's even if it ran
13 alongside the company's own system? Is it not just
14 putting another terminal in a company, or are you
15 talking about something more?

16 DR. OSBORN: No, it's not a terminal
17 because this is not - particularly with distances - a
18 system that you can tie into because it's a
19 microcomputer base, technically. So it's not a
20 terminal to another machine. But the question is \$10-,
21 \$15,000 will buy you a box to stick in company "x",
22 "y", "z", and about \$10- or \$15,000 will buy
23 you the box.

24 The Ministry's attitude at the moment is
25 to think about that and who buys what box. The second

1 is whether the company wants to run a stand alone deal
2 just for the sake of, and that's another question the
3 company has to think about.

4 The more pragmatic answer that we are
5 working on is to find out, and we've done so, what
6 companies have in terms of hardware/software, the ease
7 or difficulty of moving their data from their system
8 into SIS, the same as the Environmental Assessment
9 Board made a decision on whatever word processing
10 software environment it has.

11 THE CHAIRMAN: We won't even comment on
12 that one.

13 DR. OSBORN: And I know that the subject
14 is dear to your heart, sir, that's why I bring it up.
15 But imagine all the clients here being asked to fit the
16 environment you've got.

17 It is possible to find out what we have
18 all got and see the ease of marrying, and that's
19 exactly where we're at with companies right now.

20 MS. CRONK: Excuse me, Mr. Chairman. On
21 that issue, I would just like to confirm. I take it
22 the witness was answering your question based on his
23 own knowledge and perspective and that that's
24 abundantly clear to the Board.

25 The issue from our clients point of view

1 is a complicated one and it has a great deal more to
2 do -- there are factors other than that price tag with
3 which they may or may not agree.

4 THE CHAIRMAN: Very well.

5 MS. BLASTORAH: Q. And, Dr. Osborn, one
6 question arising out of that. You indicated earlier
7 that the information from the Ministry's silvicultural
8 information system feeds into the Ministry's management
9 information system. Might that also be the case within
10 individual companies?

11 DR. OSBORN: A. Within their company,
12 them feeding into their information system, or within
13 MNR?

14 Q. Within the company?

15 A. Their data almost certainly will feed
16 into their corporate system, no doubt about it, which
17 may have been counsel's comment in regards to the
18 company's feelings on that.

19 Q. And might it be the case that their
20 management information system which relates to a lot of
21 areas or could relate to a lot of areas such as
22 financial data, could that be incompatible with the
23 Ministry's silvicultural information system?

24 A. Those optional fields may very much
25 be a possibility of being different in design for that

1 content, yes.

2 But I want to bring it back to the
3 realization that the mandatory fields, even if the
4 company doesn't use SIS, the mandatory fields do
5 surface in the timber management planning tables. The
6 mandatory data do exist with the whole MNR's
7 information system. It is the optionals on which there
8 is perhaps some difficulty in the mode of
9 communication.

10 Q. And how is that -- you said that that
11 mandatory information surfaces in the timber management
12 plans. How does that happen? If a particular company
13 is using a different silvicultural system, how does
14 that information become transferred from their system
15 into the Ministry's system?

16 A. Well, according to the silvicultural
17 information system manual primarily the designated
18 Crown rep of the company, the DCR, is responsible for
19 ensuring the company data, based upon whatever source
20 of information from the company be it invoices or
21 whatever way we have of tracking what the company has
22 done, those records are turned into input into the
23 silvicultural information system of the Ministry's as
24 a glorified project.

25 THE CHAIRMAN: Break for lunch at this

1 time?

2 MS. BLASTORAH: Dr. Osborn, is that
3 convenient for you? Yes, I think we will have to...

4 DR. OSBORN: Yes.

5 MS. BLASTORAH: Thanks, Mr. Chairman.

6 THE CHAIRMAN: Okay. Now, how are you
7 doing with respect to finishing by three; that will
8 depend on how long we take for lunch?

9 MS. BLASTORAH: Well, Dr. Osborn has I
10 believe one more overhead on this which he may or may
11 not come back to, and then he will review the state of
12 the forest report.

13 I anticipate that would take 15 minutes,
14 Dr. Osborn?

15 DR. OSBORN: Yes.

16 MS. BLASTORAH: And then we have Mr.
17 Gordon to deal with the question of funding for the
18 terms and conditions, which I anticipate will take
19 probably half an hour. Is that accurate?

20 MR. GORDON: It will take maybe 20
21 minutes, and the reason it will take longer, that will
22 depend on your questions, Mr. Chairman.

23 THE CHAIRMAN: Okay.

24 MR. LINDGREN: Mr. Chairman, I should
25 also indicate at the conclusion of this panel's

1 evidence I have been instructed by Ms. Swenarchuk to
2 raise a few additional concerns of the matter we raised
3 this morning. That should not take more than five or
4 ten minutes.

5 MS. BLASTORAH: Well, Mr. Chairman,
6 perhaps the convenient thing to do then would be to
7 come back and deal with Dr. Osborn's evidence, see
8 where we are and if it appears that we wouldn't have
9 time to deal with the procedural matters, we could do
10 that and do the funding issue next week.

11 THE CHAIRMAN: All right. So why don't
12 we take three quarters of an hour for lunch.

13 MS. BLASTORAH: Thank you.

14 THE CHAIRMAN: We will return then at, I
15 guess, around a quarter to two.

16 ---Luncheon recess taken at 1:10 p.m.

17 ---On resuming at 2:00 p.m.

18 THE CHAIRMAN: Thank you. Be seated,
19 please.

20 MS. BLASTORAH: Mr. Chairman, before we
21 move on to the next overhead, I think Dr. Osborn wanted
22 to come back and clarify some of the discussion that we
23 had just before the break.

24 THE CHAIRMAN: Very well.

25 DR. OSBORN: In Exhibit 934, this is page

1 16, and there was some discussion, perhaps not a very
2 illusive explanation as to why this situation had
3 developed and/or the solution regarding the FMA usage.
4 And I want to, therefore, come back to page 12 or Item
5 12 in Exhibit 934 and just make a partial explanation,
6 part of the story, as to why and the implications of
7 FMAs not using SIS.

8 We spoke in the diagram, the
9 silvicultural information system feeds the timber
10 management plans and the management information, we
11 spoke to that in the Crown context.

12 If we take that same concept, we have the
13 silvicultural information system feeding the timber
14 management plan and feeding into the management
15 information system. And the black boxes in this
16 diagram allude to a copy of what I have just shown
17 vis-a-vis the Crown.

18 The company has the same -- exactly the
19 same situation; it has the silvicultural information
20 system which is the red box on the diagram which in
21 turn feeds the timber management plan tables. And
22 that's exactly what they have done in filling in the
23 tables for the management plans for which they are the
24 author.

25 Now, they very likely - and I cannot

1 comment on this exactly, but these very likely
2 situations in some cases turn out to be true - the
3 company also will take the information vis-a-vis what
4 has it done silviculturally to feed its corporate -
5 which is the red box labeled MS - its corporate
6 information system. And the dilemma in a way is that
7 for those companies where the black box and the red box
8 or SIS are the same or comparable, we have no great
9 dilemma and that's where separate the FMAs who answered
10 'yes'.

11 For the companies which have already
12 developed their red SIS box to feed their own system,
13 if they were to add that same system of SAS feeding
14 MNR's SIS, they have got two choices, either they use a
15 comparable system or they literally had to rekey the
16 data twice, re-enter the data twice. They re-enter it
17 to fit the Ministry's environment and they re-enter to
18 fit their corporate environment, it's a workload.

19 And that certainly is a situation that
20 exists and it is because of that situation we are
21 looking at ways and means of walking the corporate
22 silvicultural information system of the companies data
23 into the Ministry's SIS box. Technically, how can we
24 move from one SIS of the company to the SIS box of the
25 Crown.

1 And at this point in time, Mr. Chairman,
2 we have sort of some information in a technical sense
3 that indicates the difficulty, technically - just
4 technically, I'm not talking about desires,
5 non-desires - technically on the ease or the unease of
6 making that transition.

7 MS. BLASTORAH: Q. And notwithstanding
8 that technical difficulty, Dr. Osborn, I believe you
9 already indicated that with regard to the mandatory
10 fields in any event the information is provided by the
11 company and keyed into the Ministry's silvicultural
12 information system at the present time?

13 A. For the mandatory fields, that's
14 correct.

15 Q. Thank you.

16 A. In Exhibit 934, I am now going to
17 come all the way back to page 2, coming back to the
18 provincial annual report, and we have walked out of
19 this exhibit more or less at Level 4, forest management
20 activities, to side track to the SIS for a while.

21 Just to continue the rest of that annual
22 report. On an annual basis the revenues and
23 expenditures are not dramatically different from the
24 sort of data currently in the annual statistics in
25 terms of revenues which typically contains direct

1 revenues in terms of Crown dues and stumpage and that
2 statistics at the moment show value added that comes
3 out of the use of that wood which isn't directly MNR's
4 results, but it definitely shows to the public what
5 happens when MNR provides that wood through forest
6 industry.

7 So those values, added values that are in
8 statistically now typically also would be shown to help
9 the public understand what is coming out of the
10 utilization of that wood in that year.

11 The expenditures, again, the same sort of
12 data that currently gets annually produced through the
13 Ministry's management information system.

14 Item 6 dealing with forest change is an
15 item that is, in a technical sense, going to prove
16 difficult, especially on an annual basis and the
17 bookwork analogy is your bank account. At the
18 beginning of the year you have a balance, in the course
19 of the year there are withdrawals and deposits, at the
20 end of the year you have a balance.

21 Analogous with the forest, at the
22 beginning of the year we have a forest, over the course
23 of the year things are depleted up, burned, eaten, and
24 currently replenished and come back to free to grow,
25 the forest grows.

1 The difficulty on an annual basis, and
2 the strong suspicion that this item may well move from
3 the annual report to the five-year report in pragmatic
4 terms, is how best to show that, how best to show that
5 forest change.

6 Just to illustrate, if you think of it on
7 an area basis, what land have I got in the beginning of
8 the year, by age-class, by working group, by all other
9 parameters of the forest cover on the land we have
10 described, in the course of the year on an area basis
11 so many hectares get cut, so many hectares get burnt,
12 so many hectares get suspect in pests; on an area basis
13 some of the area becomes free to grow.

14 Okay, we've got a projectual for
15 providing an end of the year balance, but we miss the
16 whole component of growth on an area basis. So area
17 tells you the story but not the whole story.

18 Think of it in terms of volume. The
19 volume at the beginning of the year, the volume cut,
20 the volume burnt, the volume lost through pests. The
21 credit side of the ledger in the areas coming back into
22 free to grow at the bottom of list of trees free to
23 grow is miniscule. Again, a difficult subject to
24 present.

25 And all I am going to leave with you is

1 that we are technically wrestling with: What does that
2 mean, how best to show it, again, for the public to
3 understand.

4 The last item in an annual basis is
5 activity highlights, essentially a set of words,
6 pictures, picking up one or two items of this year.
7 The Ministry was either at the forefront of or the best
8 to date sort of scenario, that sort of thing.

9 Q. Could you give an example of the sort
10 of thing you might foresee being included in that
11 activity highlights, Dr. Osborn?

12 A. This year was the greatest area to
13 date so far that we have done in terms of regeneration.
14 This year we changed techniques and we found that part
15 of "x", "y", "z" really was the way to go, really a
16 technical operation for a particular methodology.

17 Q. Thank you.

18 A. The state of the forest report: What
19 have we done over the last five years, what does it
20 mean, and what does it mean to the forests of tomorrow.

21 The frontest piece or the introduction,
22 the first part, is really analagous and may well be the
23 same set of words as within the annual report, and we
24 are viewing the documents of the annual report
25 provincially and the five-year state of the forest

1 report provincially as being stand alone documents.

2 Item No. 2, the land base. There is an
3 intent that on a five year-basis the report that was
4 Exhibit 56, the Forest Resource Inventory of Ontario,
5 that document and the data within that document will be
6 updated on a five-year basis. And, in essence, the
7 Ontario's land and forest base is literally updating on
8 a regular basis of what is contained in Exhibit 56.

9 Item 3, the harvest and forest industry
10 statistics, is a summary over the last five years as to
11 what has happened vis-a-vis the harvest and the usage
12 of that wood.

13 Item 4. Item 4 in a way is a synthesis,
14 again, of what we have done silviculturally, but we
15 really in the five-year state of the forest report want
16 to focus that, and I believe there was a page 17 to
17 Exhibit 934.

18 Q. This is page 18, Dr. Osborn. I
19 believe it's the page following page 17.

20 A. Hopefully it's page 18.

21 Q. Yes. It's is not numbered.

22 MS. BLASTORAH: Actually, Mr. Chairman,
23 the last page in this exhibit is numbered page 292, the
24 reason being that it's an excerpt again from Panel 4
25 witness statement which is Exhibit 135 and it is page

1 292 of that document.

2 DR. OSBORN: And the only reason for
3 really including it is to exemplify the sorts of focal
4 points that we will show this forest management
5 activity over the last five years, what has it done
6 vis-a-vis the document, the page you are looking at
7 speaks to the inputs and the assumptions that go into
8 the projection of today's forest through time as was
9 described in Panel 4 to do with wood supply analysis.
10 So we will deliberately try and focus that information
11 to an end, and the end being: What does it mean in
12 terms of projection.

13 So this is not just a straight
14 statistical summary of what have we done in the last
15 five years, it's been done deliberately because it
16 leads right into Item 5 in that state of the forest
17 report which will be a management unit by management
18 unit wood supply analysis. What have you done at the
19 management unit level, wood supply projection, what
20 will my forest look like through time, what will my
21 levels of supply look like.

22 Q. And I believe this comes back to the
23 Chairman's question before lunch when he asked about
24 how we would do that kind of assessment long term.

25 MS. BLASTORAH: I believe, Mr. Chairman,

1 you asked a question related to this.

2 Q. Well, in many event --

3 A. In terms of how -- I will continue to
4 answer the question.

5 We will do it management unit by
6 management unit. This is somewhat similar to what was
7 done in Panel 4 with one difference, Panel 4
8 deliberately took regions -- data's regions to project
9 it. This very much will be management unit's data,
10 management unit projection, but the results shown for
11 the province as a whole.

12 Now, the difference, they will come out
13 with slightly different answers taking the aggregate
14 data tends to gloss over localized impacts. We will
15 show it management unit by management unit. The most
16 logical way of showing it is a map of the province,
17 again, management unit by management unit.

18 The management units whose wood supply
19 looks like having some dilemmas 20, 30 years from now
20 will show up bright red and flash. Those that have a
21 wood supply that looks good for the next 60, 70 years
22 will show up plastic green, for example.

23 That has been done before. From a
24 provincial point of view, you can literally look at
25 Ontario and see where there may or may not be some

1 dilemmas, there may or may not be wood over and above
2 what the requirements are today.

3 It can typically be done
4 hardware/software, and that's what Item 5 will be
5 about. And it leads again into 6 which really says
6 along the lines that Mr. Armson explained in Panel 3:
7 Given that situation, given those projections, what if
8 anything can you do to alleviate those potential wood
9 supply dilemmas.

10 Mr. Armson spent some time in woodflow
11 analysis pointing out how surplus in one unit could be
12 considered to supply potential deficits in an adjacent
13 unit, and Item 6 within that report will speak to and
14 show what the implications of such strategies might be.

15 Similarly in 6 when we talk about cover
16 type, we could look at what the implications might be
17 if there was species substitution. Panel 4
18 demonstrated, looking at softwood supply, if that is
19 happening - there's potential substitution for softwood
20 with some component of hardwood - that potential real
21 dilemma in the softwood supply can be spoken to.

22 So when we talk in 6 of wood supply
23 projections by region by cover type, we are looking at
24 what potential solutions exist to the situation
25 portrayed in five, again, trying to help the public

1 understand: We have some ideas of what might happen in
2 the future, we see some potential headaches, we see
3 some potential solutions. And I do not for a moment
4 think this is going to be easy to try and portray to
5 the public.

6 Seven will speak to a set of words
7 describing the practicalities, the implications of what
8 will come out of what's being thought about in 6: Is
9 this real, would it happen, what are the trends in
10 industrial utilization, is there that substitution
11 going on.

12 So 5, 6 and 7 really start to describe in
13 terms of the purpose of the undertaking how well are we
14 doing vis-a-vis that wood supply.

15 Finally Item 8 speaks to, again as in the
16 annual report, what technological pieces have arisen
17 that cause us to think and rethink where we may or may
18 not go in the future, and I do not treat the last item
19 lightly, given that the state of the forest report is:
20 Are we doing the right thing, we will have to be very
21 cognizant of what future projections, what impacts may
22 be to cause us to rethink what we are trying to do.

23 I made a very, very simple example, right
24 back to the beginning of Panel 16, about stocking
25 standards vis-a-vis pulpwood versus versus sawmill.

1 That same question of spacing, stocking
2 even product, rotation length, whole ranges of things
3 may cause to rethink over all what we do.

4 In terms of effectiveness: Are we moving
5 nicely along towards what we thought the goal was, yes,
6 sir, we are. If the goal moves because technology
7 changes, we really have to be aware of it.

8 Q. Dr. Osborn, the Chairman's question
9 that I meant to come back to was, I believe he made a
10 comment very early on in your presentation in relation
11 to the problem with dealing with plans that were
12 prepared over that five-year period, and you indicated
13 at that time that there were two potential ways of
14 dealing with that and that you would outline those.

15 I would ask you to do that now.

16 A. The most obvious way is to take 1995,
17 year 2000, 2005, information from the wood supply
18 analyses from every management unit done as most recent
19 as possible.

20 So 1995 could contain analysis from 20
21 per cent of the units of '95, 20 per cent of '94, 20
22 per cent of '93, sort of idea. Take them whenever they
23 were last done, wrap them all up and say: Hey, for
24 1995 my best estimate looks like. That's one option.

25 The second option is to have every single

1 management unit, perhaps over and above what it
2 normally does, redo a wood supply analysis of that time
3 frame. That's also an option.

4 Between the two of those, my personal
5 preference is the former, given the long time we are
6 looking at, the long time horizon of 60, 70, 80, 90
7 years, being out one or two years in that analysis for
8 some units in all honestly, I don't think it is going
9 to have a dramatic impact.

10 So certainly to start off with, the first
11 thought in the first five-year study of the forest
12 report is to run with the analysis recently done for
13 every unit and add those up.

14 This is exactly the same question as all
15 three Scandinavian countries have an inventory done on
16 a cycle, it is not a unique forestry problem
17 world-wide.

18 Q. And one final question, Dr. Osborn.
19 You indicated that these two reports are prepared for
20 an audience which is the general public. Is there
21 going to be any mechanism to receive feedback from that
22 audience as to ways the report could be improved and
23 made more understandable to them or those two reports,
24 rather?

25 A. Yes, very deliberately. The thought

1 at the moment, if no other thought, is that in the
2 first 1, 2, 3, 4, 5 editions typically of the annual
3 report there would certainly be a page soliciting
4 feedback in terms of - much as it's done with many
5 forms of management plan; be they timber, be they
6 parks, what have you - what comments, what thoughts,
7 what expressions have you got? Are the words
8 technical? Are the pictures appropriate? Is the
9 format sensible?

10 And this to me is very key because
11 different audiences see things different ways. What
12 might seem very simple as a map to some people, it's
13 just not the way other people see it.

14 THE CHAIRMAN: Is not this hearing one of
15 the appropriate forums for that? In other words, you
16 are explaining what you want in the two types of
17 reports, the annual report and the state of the forest
18 report, the public is before the Board and is analysing
19 the whole timber management planning process.

20 Would it not seem reasonable for the
21 parties to put forward suggestions to the Board, or put
22 forward their views to the Board as to what those
23 reports should contain, what their format should be,
24 how they should be structured, et cetera, that the
25 Board would put into its overall consideration of the

1 application and its decision state its view?

2 What I am trying to say is what you are
3 asking for is a repeat on an annual basis of, I would
4 suggest, much of what we are discussing here.

5 DR. OSBORN: Yes. Yes, sir, with one
6 comment. Over time the perception and the
7 understanding might well change and what may need to be
8 in one mode of format to start with, over time may all
9 become subject...

10 THE CHAIRMAN: Well, that's for amendment
11 later on, you know, as you --

12 DR. OSBORN: Absolutely.

13 MS. BLASTORAH: Q. And, Dr. Osborn, in
14 your opinion, quite apart from the general areas to be
15 covered by these reports - which certainly, Mr.
16 Chairman, we have indicated in the terms and conditions
17 the areas we feel are appropriate, and I certainly
18 agree that that is the sort of level of detail at which
19 terms and conditions might be appropriate - but beyond
20 that general level of detail with regard to particular,
21 as you indicated, diagram formats or mapping formats,
22 are histograms better than pie charts, that sort of
23 thing, is that the kind of comment that would be
24 solicited through feedback on an annual level?

25 DR. OSBORN: A. Partially. Not only the

1 technical ways of rearranging it, but also to some
2 extent the parts of the content that really make sense.

3 For example, I dwelt at some length on
4 what the Crown thinks is important vis-a-vis the annual
5 state of the forest report because of the objectives.
6 That may or may not be where the public overall is
7 going to come from.

8 THE CHAIRMAN: Right. But it just seems
9 to the Board that you are never going to get a
10 situation in the next short period of time where as
11 many parties from different perspectives are viewing
12 the whole process.

13 Presumably when you have an individual
14 timber management planning exercise, it is going to be
15 on a much smaller scale than this Class EA, and so it
16 would seem to the Board in event that this is probably
17 one of the appropriate forums with which consideration
18 should be given to the format and structure and what
19 gets included and what the goals are of those two
20 reports, or there may be suggestions for additional
21 reports or whatever.

22 DR. OSBORN: I agree, sir. In a timing
23 sense we have a need to produce the first one very
24 quickly. The thought was, we will put - we hear what
25 you say - we'll put the first one out and we'll react

1 accordingly. The first one may very well be quite
2 different than the second, third, and fourth and the
3 need to deliver is the concern we have.

4 MS. BLASTORAH: And certainly, Mr.
5 Chairman, I don't disagree with anything you have said.
6 My only comment would be that since this is a public
7 report, I think it is appropriate to leave some
8 flexibility in whatever term and condition is
9 ultimately imposed by the Board for the types of
10 further refinements, if you will, that have been
11 indicated by Dr. Osborn.

12 And, again, that's another area where we
13 feel the level of detail is something that will have to
14 be discussed.

15 THE CHAIRMAN: Well, we think in the
16 overall terms of the environmental assessment process
17 that we are now dealing with and the Class EA, whatever
18 the Board's decision is, will have to address the fact
19 that its decision is finite in terms of time, it comes
20 out at a particular point in time.

21 And I think it would be naive for the
22 Board to ever consider that what it has to say in year
23 such and such on such and such a day is going to be the
24 way that that shall remain for the next foreseeable
25 future with no changes, amendments, improvements, et

1 cetera. I mean, that's a given.

2 So we will have to address that, not just
3 with this issue, but with almost any issue that we deal
4 with in terms of the decision.

5 MS. BLASTORAH: Certainly, Mr. Chairman.
6 And I am sure you will hear lots of argument down the
7 road as to what the appropriate level of detail is.

8 I would suggest at this point we break
9 for Mr. Lindgren's comments, and I ask that perhaps the
10 panel could stand down, since we may not even get back
11 to additional evidence today.

12 THE CHAIRMAN: Very well.

13 MS. BLASTORAH: Thank you.

14 ---(witness panel withdraws)

15 THE CHAIRMAN: Mr. Lindgren?

16 MR. LINDGREN: Thank you, Mr. Chairman.

17 As I've mentioned this morning, I have
18 had an opportunity to review the Board's ruling with
19 Ms. Swenarchuk and we are continuing to experience
20 considerable difficulty with the approach that is being
21 adopted in this case.

22 As I understand your ruling, Mr.
23 Chairman, Ms. Cronk has not been directed to file a
24 formal Notice of Motion and, more importantly, the
25 Board has not directed Ms. Cronk to provide us with a

1 statement of the specific allegations of misconduct
2 that is alleged against Ms. Swenarchuk.

3 Now, Mr. Chairman, it is true that Ms.
4 Cronk has highlighted various portions of the articles
5 that she or her client finds offensive, but as Mrs.
6 Koven correctly pointed out this morning, merely
7 highlighting these passages does not assist us in
8 identifying the improper conduct complained of by Ms.
9 Cronk.

10 And I think the clearest example of this
11 problem may be found in the Doris Anderson article
12 dated October 27th, 1989. This is attached to the
13 letters that Ms. Cronk filed this morning. I am not
14 sure that it is necessary for you to pull it out or for
15 me to read it into the record, but the first paragraph
16 of that article has been highlighted as one of the
17 paragraphs in question.

18 I should just point out for the record
19 that this particular paragraph contains no quotes from
20 Ms. Swenarchuk, it's simply a paragraph written by a
21 third party basically reporting on a spilled breakfast
22 tray.

23 THE CHAIRMAN: All right. Before you go
24 on, could we once again try to clarify what we think
25 the Board's position in this whole matter is.

1 We would prefer, and we've discussed this
2 at the break, rather than dealing with the individual
3 passages alleging impropriety that are alleged to
4 contain some improprieties in terms of counsel's
5 dealing with the media, and in this case obviously a
6 specific counsel is involved, the Board would rather be
7 put into the position of having the duty - and it is
8 within the Board's jurisdiction it feels to do so - to
9 state in a positive sense as to what it considers the
10 obligations and the conduct of parties' counsel should
11 be in dealing with the media.

12 In other words, we would come out and
13 state what we consider to be the Code of Practice
14 applicable to counsel involved in this proceeding with
15 counsel in general's relations with the media, rather
16 than going through a long and perhaps acrimonious
17 proceeding of taking a look at the individual passages
18 of various articles and having, as a result of doing
19 that, the necessity of coming to some kind of
20 conclusion whether in fact those particular passages
21 have offended what we would articulate as what we
22 consider to be the appropriate code of conduct.

23 And the Board feels that what has
24 happened in the past, if it is against what the Board
25 feels is the proper code of conduct, will certainly be

1 known to all parties and all counsel when the Board
2 sets out what it feels the appropriate code should be,
3 and counsel can take a look at what we feel the proper
4 rules of dealing with the media are, vis-a-vis counsel,
5 and it may well be they can arrive at their own
6 conclusions.

7 Now, there have been other statements
8 made by other than counsel, as you are probably aware,
9 and they have been brought to the Board's attention
10 from time to time as well and, let's face it, this
11 Board reads; we not only read the evidence, we read the
12 newspapers, we listen to the radio, we obviously - when
13 get time - see the odd TV program and, you know, we are
14 not operating in a vacuum. We have a rough idea of
15 what is going on out there.

16 And, accordingly, we would like to set
17 out, at least for the counsel in this proceeding - and
18 perhaps we will make some statements with respect to
19 other than counsel - as to what the appropriate code of
20 conduct is without going into, as we have been trying
21 to indicate from the beginning, the specific
22 allegations here.

23 We would rather not have to come to any
24 conclusions on the allegations made to date. We would
25 rather, and we think it would be more helpful to the

1 parties, to come out with what we expect the code of
2 conduct should be from now on and what we expect to see
3 in terms of behaviour of counsel.

4 And if from this point on - I am talking
5 next week some time or whenever we deliver this - there
6 are further infractions or alleged infractions, then we
7 would be prepared to deal with those specifically.
8 Because if we set out a code of what we feel is
9 appropriate, then if counsel are not going to abide by
10 that code we are prepared, within the limits of our
11 jurisdiction, to deal with it and, of course, as has
12 been pointed out already, we have other remedies such
13 as referring matters to Law Societies, if it involves
14 counsel, or even going further under the Statutory
15 Powers Procedure Act with our powers for citation.

16 We just don't feel that it accomplishes a
17 heck of a lot at this point in time to take a look at
18 past conduct which has already occurred on behalf of
19 not only this particular counsel but other counsel and
20 other parties. We are involved in a very lengthy
21 hearing, it is not unusual for the media to corner any
22 particular counsel or party and ask for a statement or
23 their opinion on something, and perhaps all counsel
24 haven't been as diligent in looking to what the code of
25 conduct should be vis-a-vis their contacts with the

1 media.

2 And since it arose in this fashion, I
3 think we would like to deal with it by setting out what
4 we feel is the appropriate code of conduct.

5 MR. LINDGREN: We certainly appreciate
6 your concerns, Mr. Chairman. However, I would
7 respectfully remind you that this morning Ms. Cronk did
8 indicate that, at least in her submission, this matter
9 cannot be dealt with in the abstract and it would be in
10 fact necessary to deal with some of the specific
11 allegations.

12 THE CHAIRMAN: Well, we understand she
13 mentioned that, but what we are saying is, we have been
14 sort of skirting the issue since it first was raised
15 and have indicated our clear preference to be able to
16 deal with it without having to deal with the specific
17 passages. And perhaps Ms. Cronk might reconsider her
18 request to have it dealt with on other than a generic
19 basis.

20 MS. CRONK: Mr. Lindgren, are your
21 submissions finished?

22 MR. LINDGREN: Actually, I did have one
23 other comment to make, Mr. Chairman.

24 Again, I would respectfully remind you
25 that Ms. Cronk in answer to one of your questions, Mr.

1 Chairman, did indicate that she would be asking for a
2 specific finding in relation to the comments made or
3 attributed to Ms. Swenarchuk.

4 THE CHAIRMAN: Well we indicated, I
5 believe, this morning that we were very reluctant to
6 entertain that kind of result. We are not much
7 interested, quite frankly, in arriving at a specific
8 finding on the specific incidents to date.

9 Again, I don't want to repeat myself, but
10 we feel it would be more helpful to everybody if they
11 were aware of what the Board expects regarding
12 counsels' contacts with the media vis-a-vis this
13 proceeding and vis-a-vis before this tribunal.

14 And if we can do that, and if by doing
15 that we state it in a way that that is the standard we
16 expect to be followed, then if there is a breach
17 thereafter we will be prepared to deal with it.

18 And that, Ms. Cronk, in our minds would
19 be the equivalent of an undertaking.

20 MS. CRONK: I will address it, sir, if I
21 may, when Mr. Lindgren is finished.

22 MR. LINDGREN: One final comment, Mr.
23 Chairman.

24 It is certainly Ms. Cronk's prerogative
25 to proceed with this, if she wishes. Our position is

1 that if she does proceed and she does want to raise
2 these specific allegations with the Board, I think it
3 is incumbent on Ms. Cronk to provide us with a clear
4 statement of the allegations to be alleged against Ms.
5 Swenarchuk.

6 As you know, Mr. Chairman, it is a
7 fundamental tenet of natural justice that a party be
8 apprised of the case that he or she has to make, or
9 meet. In our view, Mr. Chairman --

10 THE CHAIRMAN: And we appreciate that
11 and, in that line, we dealt with it to the extent this
12 morning that we would be discussing it next week. If
13 it goes forward in that fashion, the question really
14 came down to what goes in the Notice of Motion and what
15 kind of supporting material has to go into the Notice
16 of Motion.

17 Obviously, we are dealing generally with
18 counsels' conduct with the media and Ms. Swenarchuk
19 obviously would have an opportunity next week to find
20 out exactly what in detail the allegations were.

21 But what we are trying to say, Mr.
22 Lindgren, is we would rather avoid all of that and,
23 quite frankly, proceed as I have just outlined. We
24 would like to hear, of course, from Ms. Cronk as to
25 that mode of procedure because it may obviate the

1 necessity for going any further with the specific
2 instance.

3 MR. LINDGREN: If I can just pick up on
4 one comment that you made, sir. You did indicate that
5 if we do proceed Ms. Swenarchuk will have an
6 opportunity next week to learn of the allegations to be
7 made against her.

8 My position, sir, is that that kind of
9 information should be provided as soon as possible.
10 She should be apprised in advance what those
11 allegations are, and if Ms. Cronk is not directed to
12 provide those kinds of particulars to Ms. Swenarchuk in
13 advance, I would respectfully submit that that amounts
14 to a denial of natural justice.

15 THE CHAIRMAN: All right. Well, let's
16 see if we have to get to a resolution of that issue in
17 your mind by asking Ms. Cronk if what the Board has
18 suggested would be acceptable in her view and the view
19 of her client with respect to this whole question.

20 MR. LINDGREN: Very well.

21 MS. CRONK: Mr. Chairman, there are a
22 number of comments very briefly that I would like to
23 make.

24 The first is this: With respect to the
25 suggestion that has now several times been made by Mr.

1 Lindgren that particulars of the allegations of
2 imprudence have not been provided to Ms. Swenarchuk, it
3 was exactly to demonstrate to the Board that that's not
4 the case, that particulars were provided, that the
5 correspondence was given to you this morning.

6 It may be that those particulars were not
7 provided with the degree of detail and specificity that
8 Ms. Swenarchuk would like, but nonetheless, the exact
9 precise allegations are noted in the correspondence and
10 were outlined in full by me this morning.

11 That is why, sir, I took as much time
12 this morning as I did, was to put before you Mr.
13 Justice Grange's ruling and as well the nature of the
14 allegations.

15 I don't want any impression left that
16 there has been a failure on our part to provide notice
17 quite specifically of what the allegations are. That's
18 the first point. It may be that she is not happy with
19 the adequacy of it, but they have been provided.

20 Secondly, sir, with respect to the
21 Board's indication on several occasions now of its
22 preference of the way in which to handle it; that is in
23 fact what we have invited, we have invited an
24 affirmative clarifying statement of the standard of
25 conduct that is expected.

1 I did, however, also indicate this
2 morning that we were requesting, as Mr. Justice Grange
3 had suggested was the appropriate way to proceed, an
4 undertaking that best efforts would be used and that
5 conduct wouldn't be repeated in the future.

6 Let me translate it into a very practical
7 scenario for you, sir. I understand with some
8 experience at the Bar in these matters hypothetically
9 the way in which a ruling of this kind might look, were
10 it ultimately to issue. It has to be clear, in our
11 respectful submission, to all counsel and to our
12 clients, from whom the concern emanates, that where
13 there has been in the past perhaps some failure to
14 honour or to adhere to the standard which you will be
15 articulating, there will not be a repetition in the
16 future.

17 THE CHAIRMAN: Well, Why can't it suffice
18 to say, if we set out what we consider to be the
19 standard, a clear statement to the effect that we
20 expect this standard to be adhered to by all counsel;
21 and in the event that it is not, we can be spoken to.

22 MS. CRONK: I have no difficulty with
23 that at all, sir, as long as --

24 THE CHAIRMAN: Now, that to us is the
25 equivalent I think of all counsel raising their right

1 hand and saying: We promise not to do it again.

2 MS. CRONK: What I am suggesting to you,
3 sir, is that it is appropriate that it go a step
4 further; that step is not a finding of impropriety
5 against any particular counsel - I did not ask for that
6 this morning, I was quite clear in the remarks I
7 thought that I had made - but rather an indication from
8 all counsel who represent the parties who are daily
9 before you in this matter that they will abide by that
10 standard.

11 I will put it very bluntly, sir, and as
12 candidly as I can for the Board. We, as counsel for
13 our clients - and our clients have to know that the
14 lawyers in this room will abide by that standard - and,
15 frankly, sir, once it issues from the Board, the
16 tradition is, is that everyone honours it. We wish to
17 know that the parties involved here will do so. And
18 you will have that undertaking from us the minute you
19 deliver the order.

20 On a practical level --

21 THE CHAIRMAN: But, quite frankly, we
22 just do not see the necessity for the undertaking. We
23 expect our rulings to be adhered to; and if they are
24 not adhered to, then any party can speak to us and we
25 will take, I can assure you, whatever appropriate

1 action is necessary.

2 In other words, when we issue a directive
3 or a ruling or anything dealing with the matters within
4 our jurisdiction or within what is brought before this
5 Board, we expect those things simply to be adhered to;
6 and, in the event that they are not, we have certain
7 powers to ensure that they are or, in some cases, to
8 penalize parties or take further action in the event
9 that they are not.

10 And all we are saying is, is that we
11 would be prepared I think to state what we feel to be
12 the applicable standard, the applicable code of
13 conduct. It is incumbent - and I don't see the
14 necessity of why it has to be said - that we would
15 obviously expect all parties to abide by it. If they
16 don't, that is their choice; but it is also our choice
17 thereafter to decide what we are going to do about it.

18 MS. CRONK: I understand, sir. And all I
19 can do in the face of that very clear indication is
20 obviously to obtain instructions. My instructions as
21 of this morning were to ask of you that an undertaking
22 be sought by counsel.

23 I should make one other point very clear;
24 again, I thought I had made it clear this morning. It
25 was quite deliberate that there was no comment made by

1 me this morning to the Board of the specific passages
2 from the articles; that did not happen accidentally.
3 It was not my intention, speaking for Mr. Cassidy and
4 myself, to deal with it on, as I said, a line by line
5 basis or the specifics of it.

6 So I wish to make that clear. If that
7 was going to happen, it would have happened this
8 morning.

9 THE CHAIRMAN: No, we understand that.
10 And what we are saying is: We would prefer, if we
11 discuss this matter further next week at all, that we
12 don't refer to the specific passages, we don't have to
13 deal with the specific passages.

14 We feel that we understand what is sought
15 of this Board and, as we understand it, it is a clear
16 statement from the Board as to the applicable code of
17 conduct to be exercised by counsel in dealing with the
18 media, what the Board expects and articulated clearly.

19 MS. CRONK: I understand, sir.

20 THE CHAIRMAN: And beyond that, do we
21 have to discuss anything further?

22 What I am trying to say is, I think we
23 can come up with that code of conduct without it being
24 argued out by any of the parties. We know perfectly
25 well both what Mr. Justice Grange faced in that

1 inquiry, what the Supreme Court of Canada faced in the
2 other inquiry I alluded to, and what we expect in
3 general as a Board in terms of the conduct of all
4 counsel before this Board and also what the Law Society
5 requires with respect of counsel in terms of this,
6 so...

7 ---Discussion off the record

8 THE CHAIRMAN: I am suggesting that we
9 give this consideration and come out with what we feel
10 the code of conduct is.

11 Now Ms. Swenarchuk, Mr. Lindgren,
12 obviously may wish to address this matter on Tuesday
13 which is the time we have set; but, again, we don't
14 wish to address it necessarily in a defense of
15 statements made or going into the detailed items which
16 were put forward in the documentation.

17 We would prefer, if any counsel wants to
18 address the issue generally, they might make statements
19 to the effect that: We can say anything we want when
20 dealing with the press because we view it to be a
21 matter, for instance, of freedom of speech, period; and
22 make those kinds of arguments and indicate to us
23 through submissions as to what limitations the Board
24 should or should not put on counsels' dealing with
25 media, and then we can come up with what we consider to

1 be, within the limits of our jurisdiction, the
2 appropriate code of conduct.

3 We would rather deal with it on that
4 basis, and have the assistance of counsel if they want
5 to put it forward on that basis, than deal with the
6 specific allegations.

7 MS. CRONK: I understand your direction,
8 sir, and so far as that goes, that is not any different
9 than what I was suggesting this morning to you.

10 THE CHAIRMAN: Right.

11 MS. CRONK: But with respect to the
12 aspect of the undertaking, I will have to obtain
13 instructions on that.

14 THE CHAIRMAN: Okay. Let's not have to
15 deal with that at the moment because I don't think that
16 will change anything, Mr. Lindgren, if we are not going
17 to deal with the specific allegations in terms of the
18 notice going out to the other counsel, that this issue
19 will at least be raised on Tuesday afternoon.

20 MS. CRONK: That's fine, sir. Thank you.

21 MR. LINDGREN: I am still somewhat
22 unclear, Mr. Chairman, what the procedure will be on
23 Tuesday. Are we proceeding with these specific
24 allegations or not?

25 THE CHAIRMAN: Well, I would suggest we

1 don't. And do I take it, Ms. Cronk, that you are
2 agreeing to that; not to deal specifically with the
3 allegations, but deal with the Board formulating, in a
4 positive sense, its code of conduct for counsel dealing
5 with parties. That's what we would like to deal with
6 on Tuesday.

7 And whether or not that includes any kind
8 of undertaking to be followed up by all counsel giving
9 an undertaking that they are going to abide by it -
10 which, quite frankly, the Board feels is totally
11 unnecessary - that's another question.

12 MS. CRONK: Sir, I regret I can't be more
13 directly responsive to you than I have been. I will
14 require instructions on that. I have already indicated
15 that a clear indication --

16 THE CHAIRMAN: All right. Well, in that
17 case, I don't think we can deal with that necessarily
18 on Tuesday. If you are going to need instructions, it
19 will really determine on what scope of this thing is
20 going to take place on Tuesday and then we might have
21 to get back into some of Mr. Lindgren's concerns.

22 MS. CRONK: Right. My suggestion was
23 simply this, sir - and the failure is mine to make it
24 as clear and of assistance to the Board as I could -
25 clearly, we are asking you for an indication and a very

1 clear direction as to what is the appropriate standard
2 of conduct.

3 THE CHAIRMAN: And we are prepared to do
4 that.

5 MS. CRONK: That can be dealt with, in my
6 submission, on Tuesday in the general way that you
7 suggest and you can receive submissions from all
8 interested counsel as to what that general direction
9 should or should not contain.

10 THE CHAIRMAN: Right.

11 MS. CRONK: There is a further aspect to
12 it; and, that is, whether, given the specifics of past
13 conduct of one counsel, an undertaking specifically
14 from that counsel should be required. That is the
15 matter upon which I must obtain instructions, that
16 could be dealt with subsequently and the balance of the
17 matter could proceed.

18 THE CHAIRMAN: If we deal with the first
19 part on Tuesday and counsel at that time can address us
20 with Ms. Cronk coming in with her client's
21 instructions, vis-a-vis the undertaking, if it goes
22 beyond dealing with the first part on Tuesday, then we
23 will obviously set up a different procedure if it
24 requires necessarily the matter of the undertaking.

25 MS. CRONK: I am perfectly content with

1 that, sir, and that is what I intended to suggest.

2 THE CHAIRMAN: And that will happen, Mr.
3 Lindgren, then at a later time at some point.

4 MR. LINDGREN: For the record then, Mr.
5 Chairman, I just want to restate my position; that is,
6 if and when we deal with the specific allegations, it
7 is our position that a clear statement of the
8 particulars of those allegations of misconduct have to
9 be provided to Ms. Swenarchuk.

10 THE CHAIRMAN: All right. If we are
11 going to deal with the particular allegations, we will
12 entertain your request on behalf of Ms. Swenarchuk for
13 a clearer statement of what the alleged improprieties
14 are, okay. But on Tuesday we do not intend to so deal
15 with that.

16 MR. LINDGREN: Thank you.

17 THE CHAIRMAN: And on Tuesday, Ms. Cronk,
18 we will hear from you as to the further matter of a
19 request for any undertaking from any party.

20 MS. CRONK: That's entirely satisfactory,
21 sir. Thank you.

22 THE CHAIRMAN: Okay. And then once we
23 hear your request for that, we will then at that point
24 deal with how we must deal with that request and it may
25 involve a further procedure or a further session, we

1 don't know.

2 MS. SEABORN: Mr. Chairman, I think your
3 suggestion is a good one because it addresses a number
4 of concerns that my client has with this issue.

5 Just for clarification, is it the Board's
6 intention on Tuesday then to outline what it sees as
7 being a code of conduct and hear submissions that
8 respond to that, or the opposite way?

9 THE CHAIRMAN: Well, we were suggesting
10 the opposite way.

11 MS. SEABORN: That's fine.

12 THE CHAIRMAN: That we would hear from
13 counsel before we reach any conclusions. Obviously we
14 have some of our own preconceived ideas on the whole
15 topic, but we are quite willing to hear from counsel in
16 the normal way with submissions and then, after
17 considering those, if it goes no further, we will come
18 out with what we consider to be the applicable code and
19 expect adherence to it.

20 MS. CRONK: Thank you, sir.

21 MS. SEABORN: Thank you.

22 THE CHAIRMAN: Anything further?

23 MR. EDWARDS: Mr. Chairman.

24 THE CHAIRMAN: Mr. Edwards?

25 MR. EDWARDS: For the benefit of those

1 counsel who are not here - and I was not here to hear
2 Ms. Cronk's submissions to you this morning - I am a
3 bit concerned that persons such as Mr. Colborne, Ms.
4 Bair-Muirhead, Mr. Hunter, or representatives of OFAH
5 receive adequate notice of this.

6 It is an important matter and I am very
7 pleased that the Board has perhaps limited the scope of
8 the discussion on Tuesday to what you have stated, sir,
9 but even that is a matter of tremendous importance to
10 all those persons, and I am concerned that some
11 provision be made to give them adequate notice.

12 THE CHAIRMAN: We are. We have indicated
13 to Ms. Cronk that we would like a notice to go to all
14 of the counsel for the various parties that are not
15 before us and did not have the benefit of this
16 morning's discussion to be apprised of the fact that on
17 Tuesday afternoon we will deal with that as amended by
18 this afternoon's discussion.

19 And I understood that was going out by
20 fax probably today some time?

21 MS. CRONK: It was ready earlier today,
22 sir, it has been held.

23 THE CHAIRMAN: Well, it may have to
24 change now that we are not going to deal with the
25 specifics on Tuesday.

1 MS. CRONK: In any event, it can go
2 immediately.

3 THE CHAIRMAN: So they will be apprised
4 of what we are going to deal with on Tuesday.

5 MR. EDWARDS: Thank you, Mr. Chairman.

6 THE CHAIRMAN: And we are trying to fit
7 that in, Mr. Edwards, after the other procedural matter
8 we are dealing with on the jurisdiction of the Board to
9 amend documents and, more or less, spend Tuesday
10 afternoon on those two issues.

11 MR. EDWARDS: Thank you.

12 MS. CRONK: Thank you.

13 THE CHAIRMAN: Thank you.

14 Anything further?

15 MS. BLASTORAH: Mr. Chairman, I don't
16 think there is any point in starting back with any
17 evidence today. I anticipate we have approximately a
18 half an hour -- 20 minutes to a half an hour that we
19 can deal with Wednesday morning.

20 THE CHAIRMAN: All right. We will deal
21 with that first thing Wednesday morning.

22 THE CHAIRMAN: Thank you, Mr. Chairman.

23 MS. SEABORN: Mr. Chairman, I have one
24 filing, if Ms. Blastorah is finished.

25 Last week during the Panel 15

1 cross-examination Mr. Campbell undertook to file an
2 index to Exhibit 911. I have that now ready and
3 perhaps I will just provide it to Ms. Devaul to put it
4 in Exhibit 911 for the Board and I will leave it here
5 for the parties.

6 THE CHAIRMAN: Very well.

7 All right, ladies and gentlemen, we will
8 adjourn until Tuesday at 1:00 p.m.

9 Thank you.

10 ---Whereupon the hearing adjourned at 2:50 p.m., to be
11 reconvened on Tuesday, November 14th, 1989,
commencing at 1:00 p.m.

12 [copyright, 1985]

13

14

15

16

17

18

19

20

21

22

23

24

25

